

CLERK'S COPY.

VOL III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 19

CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC. AND ITS AFFILIATED COMPANIES, ET AL,
PETITIONERS,

NATIONAL LABOR RELATIONS BOARD ET AL

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, LOCAL UNION
NO. 8-225, ET AL, PETITIONERS,

NATIONAL LABOR RELATIONS BOARD ET AL

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

RECEIVED FOR CERTIORARI FILED { APRIL 2, 1933.
APRIL 12, 1933.

CERTIORARI GRANTED MAY 14, 1933.

INDEX

	PAGE
CERTIFICATE of the National Labor Relations Board as to Transcript of Record before it.....	1
CHARGE SWORN to May 5, 1937, and filed with the Board by United Electrical Radio Workers of America.....	4
COMPLAINT AND NOTICE OF HEARING issued by the Board on May 12, 1937.....	7
AFFIDAVIT OF SERVICE and receipt for complaint and notice of hearing.....	17
NOTICE OF SPECIAL APPEARANCE by respondent Companies (petitioners herein), together with motion and affidavit in support of their motion to dismiss complaint for want of jurisdiction.....	19
AMENDED NOTICE OF HEARING, dated May 25, 1937, issued by the Board.....	34
AFFIDAVIT OF SERVICE of amended notice of hearing.....	35
ORDER of the Board dated May 26, 1937, designating Mr. Robert M. Gates as Trial Examiner.....	37
ORDER of the Board dated June 2, 1937, denying the request of the respondent Companies for a prior and separate hearing on their motion to dismiss complaint for want of jurisdiction.....	38
NOTICE OF MOTION to amend the complaint, issued by the Board and served on counsel for the Respondent Companies on June 9, 1937.....	40
ANSWER of respondent Companies to the complaint of the Board as amended to June 14, 1937; answer verified June 16, 1937.....	42
ORDER of the Board dated September 29, 1937, transferring the proceeding to the Board.....	64
DECISION; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER issued by the Board on November 10, 1937.....	65
DECISION, findings of fact, and conclusions of law....	65
ORDER of the Board dated November 10, 1937.....	127
PROOF OF SERVICE.....	131
TRANSCRIPT OF TESTIMONY before Mr. Robert M. Gates, Trial Examiner of the Board, on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937.....	133-1316
EXHIBITS before the Trial Examiner of the Board....	1317-1467
STIPULATION as to the printing of exhibits.....	1468
ORDER of this Court as to the printing of exhibits.....	1470

WITNESSES FOR THE BOARD

	S. M. Page	R. Printed Page
HAROLD STRAUB:		
Direct	42	167
Cross	901	804
Redirect	935	831
Recross	948	841
CHARLES A. SMITH:		
Direct	213	298
Cross	225	307
FOSTER STRADER:		
Direct	229	310
Cross	261	332
Redirect	267	337
STEPHEN L. SOLOS:		
Direct	271	340
Cross	310	368
Redirect	350	395
Recross	350	395
Redirect	359	401
Recross	360	402
MARTIN A. WERSING:		
Direct	369	410
Cross	477	492
Redirect	511	516
J. GREULICH:		
Direct	523	526
Cross	584	571
WM. J. KENNEDY:		
Direct	600	583
Cross	693	653
Redirect	709	666
Recross	710	667
JOHN F. EMLER:		
Direct	714	671
Cross	751	697
MICHAEL A. WAGNER:		
Direct	759	703
Cross	788	723
Redirect	795	728
GUSTA HARDING:		
Direct	796	729
Cross	883	791

Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the *Stenographic Minutes* are referred to as 'S. M.'; the pages of the *printed* record as R.

Witnesses for the Board (Continued)

	S. M. Page	R. Printed Page
JOHN SYMON:	819	745
Direct	896	800
Cross		
DAVID M. MCCARTHY:	825	749
Direct	857	772
Cross	874	783
Redirect	882	790
Recross		
ARTHUR CURRIE JOY:	953	845
Direct	1011	890
Cross	1025	901
Redirect	1031	906
Recross	1051	921
Redirect		
ROBERT MCCORMICK:	1051	921
Direct	1066	933
Cross	1078	941
Redirect		
EDWARD GIDEON:	1079	942
Direct	1106	962
Cross		
JOHN YOUNG:	1114	967
Direct	1134	982
Cross		
HARRY SPALDING:	1146	991
Direct	1168	1006
Cross	1177	1013
Redirect	1179	1014
Recross		
WM. J. BALCH:	1186	1020
Direct	1194	1025
Cross		
FRANK J. BRADY:	1200	1029
Direct	1214	1039
Cross		
ELEANOR MISBACH:	1224	1047
Direct	1237	1055
Cross	1246	1062
Redirect		
HARRY N. CROWELL:	1249	1065
Direct	1262	1074
Cross		

Witnesses for the Board (Continued)

	S. M. Page	R. Printed Page
EDWARD SHEDLOCK:		
Direct	1265	1076
Cross	1275	1083
PHILEMON EWING:		
Direct	1280	1086
Cross	1315	1113
Redirect	1336	1127
Recross	1337	1129
TERRENCE MCGOWAN:		
Direct	1338	1129
Cross	1347	1135
FRANKLIN DE LUDE:		
Direct	1351	1138
Cross	1368	1151
Redirect	1379	1159
WM. CHANDLEY:		
Direct	1384	1163
Cross	1390	1167
WM. F. O'BRIEN:		
Direct	1392	1169
Cross	1403	1177
F. W. BOHNES:		
Direct	1405	1178
Cross	1409	1182

WITNESSES FOR RESPONDENT COMPANIES (PETITIONERS HEREIN)

FLOYD L. CARLISLE:		
Direct	1433	1202
Cross	1449	1213
Redirect	1492	1246
Recross	1496	1249
Redirect	1498	1250
HAROLD C. DEAN:		
Direct	1502	1254
Cross	1523	1269
Redirect	1575	1308
Recross	1575	1308

Note: The Transcript of Testimony as hereinafter printed shows the numbering of the pages of the *Stenographic Minutes*, as well as the numbering of the *printed* pages. The pages of the *Stenographic Minutes* are referred to as S. M.; the pages of the printed record as R.

BOARD'S EXHIBITS

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
1	Charge filed with the Board by United Electrical and Radio Workers affiliated with the Committee for Industrial Organization, dated May 5, 1937			4	135	4
	Complaint issued by the Board, by its Regional Director for the Second Region, dated May 12, 1937 (with the various subsequent amendments shown)			4	135	7
	Acknowledgments and proofs of service of the complaint and notice of hearing			4	135	17
	Amended notice of hearing, dated May 25, 1937, issued by the Board			4	135	34
	Affidavit of service of amended notice of hearing			4	135	35
2	Stipulation of facts for the determination of the question of jurisdiction			23	151	1318
3	Pamphlet issued by the Consolidated Edison Company of New York, Inc., in August, 1936, entitled "Serving New York, electricity, gas, steam" (not printed; may be referred to in the Transcript of Record filed)			24	152	
4	Copy of an Order of the Board, dated June 2, 1937, denying the petition and motion of the respondent Companies for a prior and separate hearing as to jurisdiction and for dismissal of the complaint for want of jurisdiction			41	166	38
5	Notice of motion by the Board, served on respondent Companies on June 9, 1937, to amend its complaint by adding the name of Stephen L. Solosy as one of the persons named in Paragraph 19 of the original complaint as having been discharged by respondent Companies			41	166	40
6	One side of an application or pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	177	270	179	271	

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
7	The other half of a pledge card of the International Brotherhood of Electrical Workers (not printed; may be referred to in the Transcript of Record filed)	178	270	179	271	
8	Copy of the Constitution and By-laws of the United Electrical and Radio Workers of America (not printed; may be referred to in the Transcript of Record filed)			373	413	
9	Constitution of the International Brotherhood of Electrical Workers affiliated with the American Federation of Labor (not printed; may be referred to in the Transcript of Record filed)	382	420	1500	1252	
10	Letter dated November 1, 1934, from Mr. Wersing to Mr. Kennedy			714	670	1390
11	Copy of the Employees' Representation Plan of The New York Edison Company, Inc. (not printed; may be referred to in the Transcript of Record filed)			879	787	
12	Reply dated January 4, 1937, of Mr. Edward P. Prezzano to Mr. Straub's letter (Respondents' Exhibit No. 15)			945, 1500	839, 1252	1391
13	(Produced at the request of the Board) Letter from Mr. D. W. Tracy, President of the International Brotherhood of Electrical Workers, to Mr. Floyd L. Carlisle, dated April 16, 1937			987, 1500	871, 1252	1392
13 (a)	(Produced at the request of the Board) Reply by Mr. Carlisle to Mr. Tracy, dated April 20, 1937			987, 1500	871, 1252	1393
14	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and International Brotherhood of Electrical Workers through its Local Union B829, dated June 15, 1937	987	871	1448	1213	1394
15	Letter from Mr. D. W. Tracy to Mr. Ganley, dated April 21, 1937			1027	903	1406
16	Notice by employees of Westchester Lighting Company that the International Brotherhood of Electrical Workers Local B832 had become the bargaining agent for its members among the employees of Westchester Lighting Company (not printed; may be referred to in the Transcript of Record					

Board's Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
17	(Produced at the request of the Board) Photostat copy of the employment record of Eleanor Misbach for the months of April and May, 1937 (not printed; may be referred to in the Transcript of Record filed)	1229	1050	1230	1051	
18 (a), (b), (c)	(Produced at the request of the Board) Photostat copies of employment record of Eleanor Misbach for October and December, 1936, and February, 1937 (not printed; may be referred to in the Transcript of Record filed)			1236	1055	
19 (1)	(Produced at the request of the Board) Foreman's daily report and attached work order of May 12, 1937, as to A. Martini (not printed; may be referred to in the Transcript of Record filed)			1249	1065	
19 (2)	(Produced at the request of the Board) List of the Delegates and Officers of the Employees' Representation Plan, with their employment records, showing any overtime (not printed; may be referred to in the Transcript of Record filed)			1412	1184	
20	(Produced at the request of the Board) Summary of charges and accounts covering "general welfare—collective bargaining" and "employees' representation plan" accounts—1934-1937 (not printed; may be referred to in the Transcript of Record filed)			1433	1202	

EXHIBITS OF RESPONDENT COMPANIES (PETITIONERS HEREIN)

- 1 Certified copy of judgment roll filed June 2, 1937, in *Consolidated Edison Company of New York, Inc., et al., v. Lamar Hardy, et al.*, District Court of the United States for the Southern District of New York, Index No. *Eq. 81-377* (not printed; may be referred to in the Transcript of Record filed)

34 160

Note: By stipulation of the parties and Order of this Court, various of the exhibits are not printed, but may be referred to, by the Court or by the parties, in the Transcript of Record as certified and filed by the Board.

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
	Praecipe			34	160	
	Subpoena and Complaint			34	160	
	Special Appearance and Motion to Dismiss			34	160	
	Order of January 17, 1936, with No- tice of Settlement vacating service of the subpoena in equity upon certain defendants			34	160	
	Stipulation and Order <i>pro confesso</i> , dated January 29, 1936			34	160	
	Order <i>pro confesso</i> , dated March 10, 1936			34	160	
	Order of April 14, 1936, by Honorable Henry W. Goddard, United States Dis- trict Court, substituting the name of Consolidated Edison Company of New York, Inc., in place and stead of the name "Consolidated Gas Company of New York" (with affidavit on which Order was granted)			34	160	
	Decree <i>pro confesso</i> , dated October 23, 1936			34	160	
	(The above documents from the judg- ment-roll are not printed herein, but may be referred to in the Transcript of Record filed.)					
2	Certified copy of the Opinion of Caffey, <i>U.S.D.J.</i> , in entering the above judgment...			34	160	1408
3	Notice of motion by respondent Compa- nies, with affidavit, dated May 17, 1937, for prior and separate hearing as to juris- diction and to dismiss complaint and charge for want of jurisdiction (Part of Board's Exhibit No. 1)					19
4	(Produced at the request of the Board) Employee rating card of Mr. William J. Kennedy (not printed; may be referred to in the Transcript of Record filed)	714	670	1523	1269	
5	(Produced at the request of the Board) Letter of Mr. John F. Emler to Mr. Frank W. Smith, dated November 20, 1936 (not printed; may be referred to in the Transcript of Record filed)			756	701	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
6	(Produced at the request of the Board) Employee rating card of John F. Emler. (not printed; may be referred to in the Transcript of Record filed)	756	701	1523	1269	
7	Verified answer on behalf of the respon- dent Companies to the complaint of the Board as amended as to June 14, 1937....	901	804	1501	1253	42
8	Copy of Employees' Representation Plan adopted by employees of The Bronx Gas and Electric Company (not printed; may be referred to in the Transcript of Record filed)	912	812	931	827	
9 (1)	Letter, dated July 15, 1936, from Harry J. Straub, Chairman, Third General Council of the Employees' Representation Plan of The Bronx Gas and Electric Company, to Mr. E. P. Prezanno (not printed; may be referred to in the Transcript of Record filed)			926	823	
9 (2)	Mimeographed circular requesting a vote by employees of The Bronx Gas and Elec- tric Company on a plan of electing repre- sentatives for collective bargaining (not printed; may be referred to in the Tran- script of Record filed)	920	826	930	826	
10	Printed communication to the employees of The Bronx Gas and Electric Company, dated April 11, 1934, accompanying copy of the Plan (Exhibit No. 8) (not printed; may be referred to in the Transcript of Record filed)			931	827	
11	Printed letter on the letter-head of The Bronx Gas and Electric Company, dated April 11, 1934 (not printed; may be re- ferred to in the Transcript of Record filed)	931	828	1500	1252	
12	Form of ballot used by employees in elect- ing tellers to conduct their vote on April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	828	
13	Form of ballot containing propositions voted on by the employees in the election of April 17, 1934 (not printed; may be referred to in the Transcript of Record filed)			932	829	

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
14	Enrollment blank for enrollment of employees to vote and take part in the nomination and election of representatives under the Employees' Representation Plan (not printed; may be referred to in the Transcript of Record filed)	934	830			
15	Letter of Mr. Harry J. Straub to Mr. Edward P. Prezzano, President of the Westchester Lighting Company and The Bronx Gas and Electric Company			935	831	1416
16	Membership of employees in the Local Unions of the International Brotherhood of Electrical Workers having collective bargaining contracts with Companies of the Consolidated Edison Company group of Companies			1448	1212	1418
17	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B830 (gas employees), dated June 15, 1937	1470	1229	1471	1230	1419
18	(Produced at the request of the Board) Memorandum of Agreement between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B829 (electric employees), dated June 15, 1937 (printed as Board's Exhibit No. 14)	1470	1229	1471	1230	1394
19*	(Produced at the request of the Board) Memorandum of Agreement between Brooklyn Edison Company, Inc., and the International Brotherhood of Electrical Workers, and its Local Union No. B825, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
20*	(Produced at the request of the Board) Memorandum of Agreement between New York and Queens Electric Light and Power Company and the International Brotherhood of Electrical Workers, and					

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

Respondents' Exhibits (Continued)

Exhibit No.		Marked for Identification		In evidence		Printed at Page
		S. M. Page	Printed Page	S. M. Page	Printed Page	
	its Local Union No. B839, dated June 1, 1937 (not printed; may be referred to in the Transcript of Record filed)	1470	1229	1471	1230	
21*	(Produced at the request of the Board) Memorandum of Agreement between Westchester Lighting Company and The Yonkers Electric Light and Power Company and the International Brotherhood of Electrical Workers, and its Local Union No. B832, dated May 28, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
22*	(Produced at the request of the Board) Memorandum of Agreement between New York Steam Corporation and the International Brotherhood of Electrical Workers, and its Local Union No. B826, dated June 16, 1937 (not printed; may be referred to in the Transcript of Record filed)	1471	1229	1471	1230	
23	(Produced at the request of the Board) Memorandum of Agreement between the International Electrical Workers Union and its Local Union No. 3 (Inside Workers), and The New York Edison Company, dated January 29, 1924 (not printed; may be referred to in the Transcript of Record filed)			1495	1248	
24	Pamphlet entitled "A Call for Special Vote by All Employees of The New York Edison Company and The United Electric Light and Power Company," to be held on November 22, 1933, with copy of Plan for Collective Bargaining Through Employee Representation			1502	1254	1431
25	Letter dated June 28, 1937, to the National Labor Relations Board, from counsel for the respondent Companies			1577	1309	1463
25(a)	Reply by the National Labor Relations Board, dated July 2, 1937, to the letter of June 28, 1937, from counsel for the respondent Companies			1577	1309	1467

* Respondents' Exhibits Nos. 17, 18, 19, 20, 21 and 22 are generally similar in form, with variances as to particular Companies and services; for form and substantial contents, see Exhibit No. 17 as printed.

INDEX

Proceedings in U. S. C. C. A., Second Circuit.....	Page 1473
Petition of Edison Co. et al. for review of final order of Board.....	1473
Petition of Unions for review of final order of Board.....	1554
Answer of Board to petition of Edison Co. et al. for review, and request for enforcement of order of Board.....	1691
Answer of Board to petition of Unions for review, and request for enforcement of order of Board.....	1711
Reply of Edison Co. et al to Board's answer and request for enforcement of its order.....	1726
Reply of Unions to Board's request for enforcement of its order.....	1734
Petition for leave to intervene.....	1735
Stipulation and order re consolidation.....	1736
Order granting leave to intervene.....	1737
Opinion, Swan, J.....	1737
Judgment.....	1748
Clerk's certificate..... (omitted in printing) ..	....
Orders allowing certiorari.....	1748

S. M. 1138

Q. In the overhead bureau? A. In the overhead bureau.

Q. And the overhead bureau was one of the several bureaus which made up the distribution department? A. That's right.

Q. Your membership in the council of the overhead bureau,—did that make you a member of the department council? A. No, only the chairman of the bureau council could sit in meetings of the department council.

Q. So that Mr. Sutton, as chairman of your bureau council, represented your bureau in the department council? A. That's right.

Q. And you said that Mr. Harry Burns was chairman of the distribution department council? A. That's right.

Q. And he, in turn, would sit in the general council of the company? A. That's right.

Q. For the New York & Queens Electric Light & Power Company employees? A. Yes.

Q. Now, Mr. George O'Brien, concerning whom you have testified,—he was a lineman in your Elmhurst bureau? A. He was a chauffeur, a truck chauffeur.

Q. But he was employed in your Elmhurst bureau?

S. M. 1139

A. That's right.

Q. And what was Mr. Martini's job with the company? A. He is a third class lineman, I believe.

Q. In Elmhurst? A. Overhead bureau.

Q. In the Elmhurst district? A. Yes.

Q. Overhead bureau? A. That's right.

Q. Now, you spoke about the efforts which you and others made in 1935, at the time of the May or June

2954

2955

2956

John Young—For N.L.R.B.—Cross

elections, to have a vote of the employees on the continuance of the representation plan. Is that right? A. That's right.

Q. And that vote was held, as you have testified—
A. That's right.

Q. Also at that election you were again nominated by the employees in your bureau and elected to the bureau council? A. That is the year I did not serve.

Q. Well, I am speaking—yes, in '35 you were elected and did not serve? A. That's right.

2957

Q. Then in 1936 you were again nominated by the employees in your district and elected? A. That's right.

S. M. 1140

Q. The voting was by the employees of your district and not of the whole bureau? A. Just of the district.

Q. Yes, and in 1937 you said, in the Spring of 1937, these cards were circulated which asked employees to sign if they wanted to continue the E.R.P. system of electing representatives? A. That's right.

Q. Now, when you were nominated and elected as a member of your bureau council in 1934, were you or
2958 were you not a member of the Brotherhood? A. No, sir.

Q. When you were nominated and elected in 1935, were you or were you not a member of the Brotherhood? A. I was a member then.

Q. When you were nominated and elected in 1936, in June, that was after the Brotherhood had been reorganized into the local of the I.B.E.W.? A. That's right.

Q. And it was likewise after you had been a member of this committee which had dealt with the management with respect to the lay-off of certain employees. A. That's right.

Q. Now, this circulation of cards by means of which

S. M. 1140-a

employees were to say whether they wanted the E.R.P. continued or not, in the Spring of 1937, your circulation of those was only in your district? A. Our district, that's all.

S. M. 1141

Q. And related only to the employees of your bureau in that district? A. The overhead bureau, yes.

Q. And in the Jamaica district, am I right in assuming, that the circulation of the cards there was looked after by Mr. Sutton? A. Sutton and Turner.

2960

Q. Who were the elected representatives of the employees in the E.R.P., in that district? A. That's right.

Q. And this work of taking around these cards, to which you have testified was done as a part of your regular work for the E.R.P.? A. That's right.

Q. You have testified, I think, that the management allowed an employee who was a member of a bureau or department council one day a month without reduction of pay to attend council meetings? A. That's right.

Q. And two days a month for contacting the employees and seeing what the employees wanted their representative to take up with the management? A. That's right.

2961

Q. And that again was without any deduction or loss of pay? A. That's right.

S. M. 1142

Q. At least so far as your bureau is concerned, that is what you got? A. That's right, in the overhead bureau that is what I got.

Q. And so far as you know, is that what the other men who were on the bureau council got? A. Well, they

2962

John Young—For N.L.R.B.—Cross

had some understanding with the management for their respective bureaus.

Q. But as far as your bureau is concerned, that is what was done in your bureau? A. That's right.

Q. And so far as where you went, or whom you talked to on those days, you were not being made accountable, you were not accountable to your foreman or anybody else? A. No, sir.

Q. You testified concerning a special meeting that was held the day after the recognition of the I.B.E.W. as a collective bargaining agency for the company. You said you did not attend that meeting and were not invited. As you understand it, or understood it at the time, of what was that a special meeting? A. At what time?

Q. What was it a special meeting of? A. As I understand it, they were getting their forces together for to replace—

Q. Well, you spoke of it as a special meeting held on

S.M. 1143

the day after the recognition of the I.B.E.W. by the company. Was that, as you understood it, a special meeting of representatives? A. That's right.

Q. Was it a special meeting of persons who were interested in the I.B.E.W.? A. Everybody that attended it was a former representative or a representative up to that time.

Q. As you understood it, it was a meeting called by the department council chairman? A. Our general council chairman or the department council chairman?

Q. General council chairman? A. Either one.

Q. You don't know? A. I don't know.

Q. But it was called either by the department chairman or general council chairman? A. It was called by the representatives, that's all I know.

Q. Then it was that afternoon, was it, that this handing out of I.B.E.W. cards to employees by Martini took place? A. That's right.

Q. And was that in an assistant superintendent's office of some district? A. Well, the superintendent of

S. M. 1144

that district, he was classified as a superintendent, as far as I know.

Q. What district are you speaking about? A. Elmhurst District.

2966

Q. Elmhurst District? A. Yes. the district he came from.

Q. And his name you gave as Mr. Connelly? A. That's right.

Q. And the assistant superintendent there is Mr. Conway, is it? A. Mr. Wessel.

Q. Mr. Wessel? A. Yes.

Q. And was this a rainy day, do you remember? A. Yes, that's why we were in the plant.

Q. It was raining outside and you were called inside? A. Yes, we usually come around the plant in a rainy day if there isn't any emergency work to be done outside.

2967

Q. And you said that the superintendent and the assistant superintendent were there at their desk at their regular work? A. That's right.

Q. And there was a third desk in the room that Mr. Martini was using? A. That's right.

Q. And now who were these three men, who were these three general foremen, that you spoke of as being

S. M. 1145

in the group, what were their names? A. John Sheridan, Tom Green, Clarence Fogel.

2968

John Young—For N.L.R.B.—Cross

Q. Sheridan, Green and Fogel? A. That's right.

Q. Now, do you know whether they are members of the I.B.E.W.? A. I don't know, sir.

Q. Do you know whether the assistant superintendent is a member? A. I couldn't tell you, I don't know.

Q. You don't know if Mr. Connelly is, do you? A. I don't know.

Q. You know that Mr. Martini is? A. Well, he must be, he is doing enough for it.

Q. He has been active in behalf of that organization?
2969 A. Yes, very much so.

Q. Do you know whether George Sutton is? A. Yes, he told me he was a member himself.

Q. Yes, and do you know whether Harry Burns is?
A. I couldn't tell you, I didn't see him.

Q. Do you know whether George O'Brien is? A. I couldn't tell you that either.

Q. He was, I think you said, one of the employees transferred out of your bureau into the inventory department? A. That's right.

Q. Do you know whether he is still in the inventory?
A. I don't know that, sir.

2970

S. M. 1146

Q. You don't know where in the company he is employed, if at all? A. I don't know, I couldn't tell you.

Mr. Ransom: I think that's all.

(Witness excused.)

Mr. Moscovitz: Mr. Spalding.

HARRY SPALDING called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. Mt. Kisco.

Q. New York? A. Yes.

Q. Are you employed by the Westchester Lighting Company? A. That's right.

Q. That is its full corporate name, isn't it? A. Yes.

Q. How long have you been employed by that company? A. Since May, 1929.

Q. In what capacity are you employed at the present time? A. Inventory engineer.

Q. What are your duties as inventory engineer? A. I check overhead, completed overhead work, orders from an engineering, construction and accounting standpoint,

S. M. 1147

previous to their being sent to the accounting department.

Q. Are you at present a member of any labor organization? A. Yes, two.

Q. Two of them? A. Yes.

Q. What is one of them? A. The American Federation Local 832 I.B.E.W.

Q. How long have you been a member of that organization? A. For about two months.

Q. Are you a member of any other labor organization or what is the other one, rather? A. The Independent Gas and Electric Employees.

Q. How long have you been a member of that organization? A. About six weeks.

Q. Were you a member of any other labor organiza-

2972

2973

2974

Harry Spalding—For N.L.R.B.—Direct

tion during the period of time that you have been employed by this company? A. Yes, the E.R.P.

Q. Did you hold any office in it? A. I did in its first year.

Q. What office? A. Representative.

Q. How long did you hold that office, one year? A. One year.

Q. Up until what time? A. Through '35.

S. M. 1148

2975

Q. Yes. A. I have forgotten what year that was.

Q. All right, and did you continue your membership in the E.R.P. until it went out of existence? A. Yes.

Q. And when, so far as you know, did it go out of existence? A. I don't know that it ever did.

Q. You have never been notified, is that so? A. That's right.

Q. You became a member of the Independent Gas Union about six months ago? A. Six weeks.

Q. About six weeks ago? A. Yes.

Q. Before that was it that you became a member of the I.B.E.W.? A. That's right.

2976

Q. Yes, before becoming a member of the I.B.E.W., did you participate in any meeting of employees called by a supervisory employee of the company? A. Yes.

Q. Where this question was discussed? A. Yes.

Q. Do you recall when that was? A. About the first of April, as near as I can recall.

S. M. 1149

Q. Where was the meeting called? A. In the division engineering office in White Plains, New York.

Q. That is of your company? A. The Westchester Company, yes.

Harry Spalding—For N.L.R.B.—Direct

2977

Q. Who called the meeting? A. The division engineer, through his assistant.

Q. What was the division engineer's name? A. Morris Brock.

Q. And what was the assistant's name? A. A. W. Howell.

Mr. Ransom: What was that name?

The Witness: A. W. Howell.

Q. (By Mr. Moscovitz) Is the engineer the person to whom you are responsible for your work? A. No.

2978

Q. Who is the person to whom you are responsible? A. My immediate superior is in Mt. Vernon.

Q. Yes, and what is his title? A. I don't know.

Q. What's his name? A. A. W. Dearman.

Judge Ransom: What's that?

The Witness: A. W. Dearman.

Q. (By Mr. Moscovitz) Do you know what group of

S. M. 1150

men the engineer who called this meeting had control over? A. All the employees in that office except two.

2979

Q. Who are the two? A. Myself and another man that does the same work as I do.

Q. Yes, and how many persons then are there who are directly responsible to the engineer? A. Practically 15.

Q. And you say you are responsible to this other person that you have named but whose title you don't know, is that right? A. That's right.

Q. Is he your immediate superior? A. That's right.

Q. Is there any working relationship between yourself and the engineer? A. What?

Q. Do you submit any work to him at all? A. Well, we check on his work.

2980

Harry Spalding—For N.L.R.B.—Direct

Q. You check on his work? A. Yes.

Q. After checking on his work, you then send your reports to your superior? A. That's right.

Q. Is the engineer on a weekly or a monthly payroll?
A. I don't know.

Q. Now, you say the engineer called a meeting

S. M. 1151

2981

through his assistant, and who attended? A. Every one in the office including us two.

Q. Were the two of you asked to attend? A. Yes.

Q. By the assistant? A. By the usual routine letter that is passed from desk to desk and each one signs.

Q. When you say the usual routine letter, what do you mean? A. It is a form, the heading of which is made up of the names of the employees concerned and a space opposite each name for initialing and dating and the bottom two-thirds of the form is used for whatever the form is sent out to convey.

Q. Now, is that a form used by the company whenever it calls for a gathering of its employees? A. Not necessarily.

2982

Q. Well, in what cases does the management use such a form, if you know? A. For notifying the employees of changes in routine, it is a general form, it is just in the office.

Q. Now, interoffice form, is that it? A. That's right.

Q. And it was through the passing of this form that you were advised of the meeting and asked to attend, is that right? A. That's right.

S. M. 1152

Q. Do you recall what time of the day it was? A. In the morning about ten.

Q. And what took place at this meeting? A. The meeting was called for ten o'clock and shortly after ten o'clock Mr. F. Ungerer and Mr. Henry Geisler arrived from the general office in Mt. Vernon.

Q. Who are they? A. Mr. Ungerer was at that time the E.R.P. representative for the entire engineering department of the Westchester company.

Q. What does he do now? A. He is now the president of the I.B.E.W. local in Westchester.

Q. Do you know the number of the local? A. 832.

Q. And what is this other gentleman's name? A. 2984
Henry Geisler.

Q. What was he doing at that time? Where was he, employed? A. Oh, he has charge of the engineering department in Westchester.

Q. In a supervisory capacity? A. Yes.

Q. How many men does he have charge of? A. The entire engineering force.

Q. How many men is that, do you know? A. I would guess, about 200.

S. M. 1153

Q. Is that your best approximation? A. Yes.

Q. And what were you saying about him when I interrupted you? A. These two gentlemen came to hold this meeting.

Q. Yes. A. Well, we all drew up chairs and gathered around Mr. Unger, who stood and conveyed the information for the first time in brief detail in relation to what we had read in the papers a few days or weeks before, in relation to Mr. Carlisle's seeing fit to have the I.B.E.W. bargain for the system employees.

Q. Now, did you give this date as April 1st? A. Approximately.

Q. Well, was it at a time immediately after Mr.

2986

Harry Spalding—For N.L.R.B.—Direct

Carlisle's announcement of recognition of the I.B.E.W.?

A. A few days.

Q. A few days after that? A. That's all.

Q. Mr. Geisler was the supervisory employee in attendance whom you referred to. Were there any others? A. Mr. Brock and Mr. Howe.

Q. The engineer and the assistant engineer respectively? A. That's right.

Q. Is Mr. Geisler in a position superior to that of the engineer and assistant engineer? A. Mr. Geisler is Mr.

2987 Brock's immediate superior.

S. M. 1154

Q. Yes. And in the eight years that you have been employed in the company, did you ever know Mr. Geisler to either call or attend a meeting of employees? A. Not at which I have been.

Q. Had it ever been brought to your attention that he had? A. No.

Q. Is it his practice, do you know whether or not it has been his practice, to speak with employees throughout the company in groups? A. Well, in the normal
2988 routine of his work he comes in contact with certain of the employees, a minor portion, I would say, as far as I have observed.

Q. In the eight years that you were with the company, did you ever speak with him or he with you? A. No, not until this meeting.

Q. At the time this meeting was called, Mr. Unger was, so far as you know, acting as a representative of the E.R.P., or, rather, was he still, in so far as you know, a member of the E.R.P.? A. I don't know what he was then because that was during the time that the E.R.P. was supposedly being dissolved and the I.B.E.W. replacing it.

Harry Spalding—For N.L.R.B.—Direct

2989

Q. Tell us what took place at the meeting? A. Mr. Unger explained in an indefinite manner—

Judge Ransom: Move to strike out "an indefinite manner".

S. M. 1155

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) Tell us what took place, what was said. A. That the management had seen fit to bargain with the I.B.E.W. and that he urged us to sign applications which he distributed among the 16 or 18 people present. I asked him—

2990

Q. What applications? A. I.B.E.W. applications.

Q. Yes. A. I asked him what form of union, what sort of thing was this that the management was urging us to join, and he stated that he had no definite information on it, no constitutional by-laws, which I had asked him if he had with him.

Q. Was this all in the presence of Mr. Geisler? A. That's true.

Q. Yes. A. The discussion became heated on the part of Mr. Unger and Mrs. Geisler saw fit at that time to take over the discussion at which time Mr. Geisler stated that the employees must have faith in the company and urged us further to join the I.B.E.W., and I made the statement that it was not through a lack of faith in the company that I objected to this procedure, but it was a difference of principles, and the meeting closed, and at

2991

S. M. 1156

its closing, one person signed and put in his application on the desk opposite Mr. Unger.

Q. Had the cards been passed out to the employees while they were at the meeting? A. That's true.

2992

Harry Spalding—For N.L.R.B.—Direct

Q. And do you recall who the one employee was?
 A. Mr. Unger—oh, the one employee who signed the card?

Q. Yes. A. That was Sam Lehman.

Q. Yes. A. And he made the statement, when he put his card on the table, that he felt that whatever the company did was all right with him. There were a few other questions asked.

Q. What were the other questions asked, do you recall?
 A. More or less similar to the ones I had asked.

2993

Q. By persons other than yourself? A. Yes.

Q. They asked of Mr. Geisler? A. Mr. Unger.

Q. And do you recall the questions? A. Mr. Tribou asked Mr. Unger how much time we had to sign up. Mr. Unger told him to sign up immediately.

Q. Was that the end of that meeting for that day?
 A. That was the end of the meeting, yes.

Q. Then what took place? A. Mr. Geisler came over

S. M. 1157

to me and asked me what I had on my chest, which made me somewhat mad, and I told him nothing.

2994

Q. Why did it make you mad? A. Well, the whole procedure of the company from the time Mr. Carlisle had seen fit to accept the I.B.E.W. as the bargaining agent for us employees, and without allowing us what, in my mind, was our right to decide for ourselves who was to be our bargaining agent, and this is the first time that the management had contacted me and the manner in which it was done I felt was entirely unethical and out of order and if he had not been my superior, I would have told him.

Q. And what did he say to you, outside of asking you— A. Well, he seemed to realize that I was angry and didn't press the point further.

Harry Spalding—For N.L.R.B.—Direct

2995

Q. Did you say anything to him? A. No.

Q. Was that the only meeting you had with Mr. Geisler? A. Yes.

Q. You had none after that at a later date? A. No.

Q. Was there any conversation between you and Mr. Geisler as to what would happen if a man refused to sign up? A. I don't remember that point being brought up.

Q. Was there any questioning during the time that Mr. Geisler was conducting the meeting as to what would happen if a man refused to sign up?

2996

S. M. 1158

Judge Ransom: I object to the witness' statement. Mr. Unger conducted the meeting.

Trial Examiner Gates: He may answer.

A. Yes, I do remember now.

Q. (By Mr. Moscovitz) What was it? A. Mr. Tribou brought that question up in just about those words, and Mr. Geisler again made a statement that the employees must have faith in what the company was doing.

Q. How long did that meeting take? A. I should judge about 20 minutes.

2997

Q. Then you all went back to work? A. That is true.

Q. No further meetings that day, is that right? A. Not that I know of.

Q. Were you approached at any time after that meeting by anyone to become a member of the I.B.E.W.? A. Yes.

Q. Was it while you were at work? A. Yes.

Q. Do you recall when? A. A few days later, evidently some checking had been done and they found I had not signed it yet and I was called by Mr. Dearman.

Q. By whom? A. Mr. Dearman.

2998

Harry Spalding—For N.L.R.B.—Direct

S. M. 1159

Q. That is your superior, is that right? A. That's right.

Q. Yes. A. And asked if I was going to sign, at which I told him "not yet," and a few days, later, I can't remember who called me, but someone did, and urged me to sign, and I said, "All right," I would, and I signed the application in pencil and sent it through.

2999

Q. Well, do you recall who it was that gave you the application or was it an application that you had received at the Geisler meeting? A. That's the application.

Q. The one you had received? A. Yes.

Q. Do you recall who it was that asked you about the signature? A. Well, I sent that application through and in a few days it was brought back.

Q. You say you sent it through? A. In the company mail from White Plains to Mt. Vernon.

Q. To whom? A. Mr. Dearman.

Q. Yes, then what happened after you sent it to Mr. Dearman through the mail? A. He brought it back to me and showed me where an application signed in pencil

3000

S. M. 1160

was not legal and told me it was made out wrong and gave me another application and asked me to sign it. Oh, before that, the second application was handed me by Mr. Howe who had had a telephone call from Mr. Dearman and I filled out a second application and sent it through the mail.

Q. In other words, first there was your pencil one through the mail, is that right? A. That is true.

Q. Then a call from Mr. Howe to you? A. No, Mr. Howe was in the office.

Q. I see. A. And told me that my first application was not made out satisfactorily and that I had been requested through him to make out a second one.

Q. And did he tell you to whom to send it or to give it? A. No.

Q. Did you make it out? A. Yes.

Q. Who did you give it to? A. I sent it through the company mail to Mr. Dearman.

Q. Yes. A. And that I also made out wrong and it came back.

Q. Why was the second one wrong? A. I have for- 3002
gotten.

S. M. 1161

Q. All right. A. And each time I made out an application I stated to some one that I was making it out under protest, did not wish to have anything to do with the I.B.E.W.

Q. To whom did you make the statement of protest? A. To Mr. Dearman.

Q. Now, you sent your third card in again to Mr. Dearman, is that right? A. That is true.

Q. And was that wrong also? A. I think not, it 3003
stuck.

Q. What? A. It stayed.

Q. It stuck? A. Yes.

Q. All right, now, why were all of these application cards wrong? A. I did it purposely.

Q. Why? A. Because I didn't want to belong to the organization, I wanted to—

Q. You thought you would wear them down? A. No, I wanted them to stop wearing me down.

Q. All right. A. My job is somewhat complicated and this sort of thing was more or less nerve-wracking.

3004

Harry Spalding—For N.L.R.B.—Direct

S. M. 1162

Q. And did you then become a regular member of the Local of the I.B.E.W.? A. I presume so, they came around about ten days later and collected.

Q. Who did? A. I have forgotten who I paid the \$1.50 initiation to.

Q. Well, did someone come around while you were at work and collect? A. That's true.

Q. Did they also collect from the other employees? A. Yes.

3005

Q. You saw that? A. Yes, but I have forgotten who did it.

Q. Well, was it one of the employees in your own department? A. I recall now, a Mr. Turner, a draftsman.

Q. Where is he a draftsman at? A. In the White Plains office.

Q. Is that in the central engineering department? A. Yes.

Q. Yes. A. Was requested over the phone, which is on my desk, by Mr. John Zucco.

Q. Who is he? A. He is an employee in the Mt. Vernon branch.

3006

S. M. 1163

Q. Yes. A. To make out some, just ink receipts, and collect the dues from employees in the department. I think the reason he was selected was because he was a teller from our department in the E.R.P.

Judge Ransom: I move to strike out the volunteered statement as wholly incompetent.

The Witness: Mr. Turner said that he thought that was the reason.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Harry Spalding—For N.L.R.B.—Direct

3007

Q. (By Mr. Moscovitz) And did this fellow collect dues, you say from you, as well as other men, when he came over? A. That's right.

Q. Was this in the presence of any supervisory employee or employees? A. Yes, Mr. Brock and Mr. Howell, he collected from Mr. Howell.

Q. Is Mr. Howell a member of the I.B.E.W.? A. Yes, so I understand.

Q. Have you gone to any of the meetings since becoming a member? A. I don't know of any meetings of our department in the I.B.E.W.

3008

Q. This all took place you say after Mr. Carlisle's

S. M. 1164

recognition of the I.B.E.W.? A. As near as I can remember, about ten days after.

Q. Yes, so that it ran through the balance of the month of April; do you recall whether any of this activity about which you have testified took place in the first part of May? A. Approximately the first part of May or the latter part of April, I have forgotten which.

Q. 1937? A. 1937.

Q. Now, do you recall whether or not after you signed your final application card for membership in the I.B.E.W. and paid your initiation dues, any notices were posted on the company bulletin board that the I.B.E.W. was being organized—well, strike out "and"? A. Yes.

3009

Q. What date? A. About May 15th.

Q. Do you recall on what bulletin board you saw that? A. In the central division engineering office.

Q. Is that in the glass case? A. No.

Q. The regular bulletin board? A. That's true.

Q. Was—what did the notice state? A. It was a full eight and a half by eleven page, it was typed full, various details in relation to the I.B.E.W..

3010

Harry Spalding—For N.L.R.B.—Direct

S. M. 1165

Q. Yes. A. As I recall among other things, it announced that the I.B.E.W. local 932, the charter for which had been granted by the A.F.ofL. was now the bargaining agent for the employees of the Westchester Lighting Company. I don't remember what else was on it.

Q. Yes, and is this the notice to which you refer?

(Document was passed to the witness.)

3011

A. Yes, there are three more notices on the bulletin board now.

Mr. Moscovitz: I offer it in evidence.

Trial Examiner Gates: There being no objection, it is admitted.

(Document referred to received in evidence marked Board's exhibit No. 16 for identification, Witness Spalding.)

Q. (By Mr. Moscovitz) Now, over what period of time did you notice the bulletin which I have just put into evidence as on the bulletin board? A. At least a week.

3012

Q. Were there any other bulletins on the board at that time? A. No, not in relation to labor.

Q. Now, have you seen any others? A. Sir?

Q. Have you seen any others? A. There are not at the present moment, or rather now we have three at the present moment as far as I know on the bulletin board in relation to I.B.E.W. activities.

Q. Have you ever seen any notices regarding the ac-

S. M. 1166

tivity of any other labor organization outside the I.B.E.W.? A. Never.

Harry Spalding—For N.L.R.B.—Direct

3013

Q. Is the organization of which you are now a member of the Independent organization placed—have they placed bulletins on this bulletin board? A. No.

Q. Have you been granted the right to do so? A. I never requested it.

Q. You never requested it? A. No.

Q. What are these other bulletins that now appear on the bulletin board that you have just referred to? A. Somewhat similar to that one.

Q. Do you recall what they state, do you recall when they were put up? A. One is a copy of the I.B.E.W. news weekly, it is some form of newspaper that I have seen numerous copies of throughout the various departments that I come in contact with.

3014

Q. Yes, what are the others? A. The other is a list of signatures of the previous E.R.P. general council.

Q. (By Mr. Moscovitz) List of signatures of the previous E.R.P. general council. A. Yes, in relation to their going over to the I.B.E.W.

Q. And what is there on the particular notice that

S. M. 1167

their signatures appear on it? A. Just a notice above the signatures in relation to the E.R.P. going over to the I.B.E.W.

3015

Q. Yes, and does it indicate whether or not these persons who signed are now officers of the local of the I.B.E.W.? A. I don't remember.

Q. Do you recall their names? A. Mr. F. Unger.

Q. Now, you have already testified about his being connected with the I.B.E.W. Is that right? A. That's true.

Q. Yes. A. And about a dozen other names that I don't remember.

Q. Any other bulletin? A. Yes, there is another bul-

3016

Harry Spalding—For N.L.R.B.—Cross

letin somewhat similar to that one: I don't recall just what is on that.

Q. You say those bulletins are still on the Board? A. They were last night at five o'clock.

Q. That's all.

Trial Examiner Gates: Shall we take a recess for five minutes before cross examination?

Judge Ransom: That will be very agreeable.

Trial Examiner Gates: Recess for five minutes.

3017

(Whereupon a five minute recess was taken.)

AFTER RECESS

S. M. 1168

CROSS EXAMINATION:

Q. (By Judge Ransom) Mr. Spalding, what is your payroll title? A. Inventory engineer.

Q. And where is your work performed? A. In White Plains, that's where my office is.

3018 Q. Well, is the inventory work in the Westchester Lighting Company a separate and independent bureau or is it in the engineering or the accounting department? A. I understood, due to a very recent change, that the continuing property record bureau has been put under Mr. Watt and is a separate unit.

Q. Well, when, as of what time do you identify that change? A. Approximately two weeks ago and Mr. Dearman told me.

Q. Before that, was it identified with the engineering or the accounting department, as you understood it? A. The part of the continuing property records that I am in was under the engineering department.

Harry Spalding—For N.L.R.B.—Cross

3019

Q. But not a part of the division engineering office in White Plains? A. It was a part of the division engineering office but not a part of the functions of the division engineer in the department.

Q. That is your work at White Plains on the checking of work orders for overhead distribution installations was physically done in White Plains in the division en-

S. M. 1169

gineer's office? A. That's true.

Q. But you were not responsible to the division engineer or the assistant division engineer in the White Plains office? A. That's true.

3020

Q. Your responsibility was to Mr. Dearman in the Mt. Vernon office? A. That's true.

Q. And do you know what Mr. Dearman's payroll title was, if any? A. He told me that he didn't know.

Q. Well, did Mr. Dearman devote all of his time to this inventory work with respect to the continuing property records? A. As far as I know.

Q. Yes. Now, the year that you were a representative under the E.R.P., what bureau did you represent?

A. I represented the Mt. Kisco commercial department.

3021

Q. You then were in 1934 and '35 in the Mt. Kisco commercial department? A. For a little over a year, during the depression, I was transferred from the engineering into the commercial and then back again into the engineering department.

Q. During what period of time were you in the commercial department? A. I think in 1934, I have just forgotten the dates.

Q. And your duties then were at the Mt. Kisco office

S. M. 1170

of the company? A. That's true.

3022

Harry Spalding—For N.L.R.B.—Cross

Q. And what work were you doing in the commercial department at Mt. Kisco? A. Credit work.

Q. It was during that time that you were elected a bureau representative of the Mt. Kisco Commercial office? A. Departmental representative.

Q. Departmental— A. Departmental representative, I think they called it.

Q. You were on the departmental—you were departmental representative, then, of the commercial department? A. That's true.

3023

Q. For employees throughout the company? A. That's true. I was elected to that office in February, I believe, and about the first of August that same year I was transferred to the engineering department.

Q. And by February you mean February of 1934? A. I think it was previous to that.

Q. Before 1934? A. I can tell you in a minute. I think it was in 1933.

Q. Well, in any event, you were not nominated and elected to that place in the department council by the employees of the commercial department at Mt. Kisco commercial office? A. Yes, sir.

3024

S. M. 1171

Q. You said that this meeting of employees in the White Plains office and in the engineering office of the White Plains building was called to be held after one o'clock? A. That's correct.

Q. Is that correct? A. That's right.

Q. Generally for those 16 to 18 employees was that the lunch hour? A. No, for none of them.

Q. Was that after the lunch hour? A. No, it was not.

Q. It is not after the lunch hour? A. It was after the lunch hour.

Q. That is, these 16 or or 18 employees had their lunch hour when? A. 12 to 1.

Q. So that was immediately on return from lunch?
A. That's right.

Q. And was that true as to all of them? A. I didn't hear you.

Q. I say was that true as to all of them? A. Yes.

Q. This was immediately after their return from lunch? A. Yes.

Q. You said, I think, that Mr. Howell was a member and is a member of the I.B.E.W.? A. I think so.

S. M. 1172

3026

Q. Do you know whether Mr. Brock is or not? A. I don't know.

Q. Mr. Dearman, you say, is a member? A. I didn't say but I think he is.

Q. Yes. Do you know whether Mr. Geisler is a member. A. I don't know.

Q. Do you remember whether Mr. Turner, this draftsman in the White Plains office, do you know if he is a member? A. Yes, he is.

Q. He is? A. He is.

Q. Do you know whether John Succo is a member?
A. I understand he is.

3027

Q. You said that this notification which was sent around to the employees in that office giving information of this meeting at one o'clock, it was in a general form that was used in the department for bringing the employees together? A. Not necessarily for that.

Q. Well, they are used, it was in the general form and type that was used for any information that anyone wished to convey to employees? A. As I remember, yes.

Q. Was it signed by anybody? A. I don't remember.

S. M. 1173

Q. You are not able to state to the Board whether it

3028

Harry Spalding—For N.L.R.B.—Cross

bore any signature of Mr. Howell or Mr. Brock? A. No.

Q. So far as you were concerned, although you worked there in that office, you were not an employee of that division engineering department? A. That's right.

Q. Referring now to Board's exhibit No. 16, which you said was the notice that you saw on the Bulletin Board, this is addressed to the members, was it not? A. It states here, "to the members", it is unsigned.

Q. And you understood that it related to and was addressed to the members of Local B-832, of the I.B.E.W.? A. Yes.

Q. There wasn't any doubt in your mind about that, was there? A. None at all.

Q. Now, did you notice that this bulletin in the first instance calls attention to the appointment of two employees by the local to serve as the temporary business managers until an election was held for permanent officers? A. Yes, I read that.

Q. And it also conveyed information of the granting of the charter to Local B-832? A. I believe so.

Q. And it contained a notice of a meeting of the coun-

3030

S. M. 1174

cils in the I.B.E.W. to elect temporary officers and to appoint temporary committees? A. I don't just recall that.

Q. Well, refresh your recollection (handing Board's exhibit No. 16). A. I didn't read it all at the time.

Q. Well, do you read it now? A. Which?

Q. Paragraph 16, I call your attention to? A. Yes.

Q. Do you know whether that meeting for the election of temporary officers was held by the local? A. I don't know.

Q. And the last paragraph notified as to the formation of the temporary Board, executive Board, until there

might be a general open meeting of all members to elect permanent officers? A. Yes.

Q. Do you know whether that temporary executive board was completed by the local? A. I think that is one of the notices that is on the bulletin board now. I am not sure.

Q. Are you able to state whether the general meeting of the local for electing of permanent officers and com-

S. M. 1175

mittees has yet been held? A. To my knowledge, it has not.

3032

Q. Well, do you mean by that so far as you know or that you don't know? A. So far as I know.

Q. It has not been held? A. It has not been held.

Q. In any event you have not seen it or received any notice of a recall of that meeting for the election of permanent officers? A. We have not.

Q. As far as you know the local is still functioning through the temporary officers and the temporary executive board and the temporary executive committee referred to in this and subsequent notices? A. So I understand.

3033

Q. I take it that you also read in this bulletin, "to facilitate the collection of the initiation fee that the business managers had empowered various persons to collect such fees provided the collection is not made during working hours on the company's property? A. That's true.

Q. And your statement is that nevertheless you say you saw instances in which that was done? A. That's true.

Q. Your feeling is, as I understood your testimony, that you thought that each employee should have the

3034

Harry Spalding—For N.L.R.B.—Cross

S. M. 1176

right to choose the agency through which he would bargain with the management if he saw fit to bargain collectively? A. Yes, that is part of what I felt.

3035

Q. Well, have you any objection, or do you feel there is anything wrong about the I.B.E.W. bargaining with the management on behalf of such of the employees as are members of the I.B.E.W.? Well, I will withdraw that question for the moment. Let me ask you this: Your testimony this morning assumed that the I.B.E.W. was recognized as the bargaining agency for all the employees, did you not? A. Yes, at that time that was the impression I had.

Q. Did your representative in the general council of your company under the E.R.P. or the chairman of that general council report to the employees in Westchester or to you, among others, what was said by Mr. Carlisle? At the meetings on April 25th and 21st, with the members of the general councils of the various companies? A. Not to my knowledge.

3036

Q. Well, you understand, do you not, that your local 832, B-832, has been recognized by a contract as the collective bargaining agency for such employees in the Yonkers Electric Light and Power Company as belong to Local B-832? A. That's the way I understand.

Q. Didn't you read in the newspapers, at the time, April 20th, and 21st, that the recognition of the I.B.E.W.

S. M. 1177

was granted as a collective bargaining agency for such employees as were members of it?

Mr. Moscovitz: I object to that, Mr. Examiner. I do not understand that is the announcement that appeared in the newspaper.

Harry Spalding—For N.L.R.B.—Redirect

3037

Judge Ransom: I am asking him if he read that announcement.

Trial Examiner Gates: He may answer.

A. No, I did not.

Q. (By Judge Ransom) I do not believe I asked you about Mr. Unger. As you understand it, he is the temporary president of Local 832, or temporary chairman?

A. Yes.

Q. Do you know whether Mr. Geisler is a member of I.B.E.W. or not? A. No, I do not.

Q. That's all.

3038

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Judge Ransom asked you whether or not an election of officers took place as was stated would take place in Board's exhibit #16?

Judge Ransom: Do you mean temporary election or permanent election?

Q. (By Mr. Moscovitz) Either one of them. Have you received a notice of any meeting from the local?

S. M. 1178

3039

A. I have never received a notice from the I.B.E.W. as a member.

Q. All right. Now, you do not have any objection to the I.B.E.W. representing its members, do you? A. Well, I am a member of it.

Q. But will you first answer that question. You have no objection, as such, to a labor organization representing its members, do you? A. That would be none of my business.

Q. But you do object, don't you, to a company, through its representatives, forcing men to become mem-

3040

Harry Spalding—For N.L.R.B.—Recross

bers of that particular organization or any labor organization; don't you? A. Well, I would object strenuously if they did that to me.

Q. As was done to you? A. Right.

Q. You want the men to have a free choice of representation or a free choice of becoming a member of a labor organization; don't you? A. I would like that for myself, yes.

Q. And that is the theory and philosophy to which you subscribe; isn't it? A. Yes.

3041

Q. That's all.

Examination by Trial Examiner:

Q. (By Trial Examiner Gates) You referred to a

S. M. 1179 . . .

man named Turner, I believe, you said he was a teller in the employee representation plan. Is that correct? A. Yes.

Q. Is that what you stated? A. Yes.

Q. What is a teller? A. There are tellers merely for the election.

3042

Q. I see. A. They are elected at the same time the alternates and the representatives are.

RECROSS EXAMINATION:

Q. (By Judge Ransom) A teller is a person who is elected by the employees to serve, or was elected, to serve in a board of tellers which had charge of the preparation of ballots and the holding of the elections? A. Yes.

Q. And the counting and announcing of the results? Of the elections? A. That is the way it is, I believe.

Q. And that was the system under which the elec-

tions were conducted for the choice of representatives for the E.R.P.? A. Yes, that is according to the by-laws of the E.R.P. as I remember it.

Q. And Mr. Turner was an elected member of the

S. M. 1180

Board of Tellers under the E.R.P.? A. I don't know if he was on the board of tellers, but he was one of the district tellers.

Q. One of the district tellers. That is, he was one of the tellers who in the White Plains district— A. Engineering department.

3044

Q. —engineering department, acted for the employees in the conduct of that election? A. That's right.

Q. Do you know whether Mr. Turner was and is a member of the I.B.E.W.? A. I know that he is.

Q. (By Trial Examiner Gates) The tellers, then, have no active function except once a year during the annual election? A. According to the by-laws they would function if a special election would be called in addition.

Q. (By Judge Ransom) They would have charge of receiving the nominations, petitions, preparing the ballots? A. Yes.

3045

Q. Supervising the election, enforcing the rules, governing the election? A. Yes.

Q. And then counting the ballots and posting the results of the ballots? A. That's right.

Q. (By Trial Examiner Gates) These bulletin boards

S. M. 1181

that you referred to on which these several notices have been posted, are they locked? A. No.

Q. So that anyone would have access to them? A. That's true.

3046

Harry Spalding—For N.L.R.B.—Recross

Q. Is there any regulation as to employees posting such notices? Do they have to be countersigned by the company officials or anything of that kind? A. I don't know exactly whether they would or not. I should say the manner in which bulletins are put on the bulletin board would be governed by the man in charge of the department. It would come under the supervision for which he is put there.

3047

Q. Do employees have to obtain permission for posting before posting them? A. I don't know. I would think so, it would be common sense, in keeping with the policies and functions of the company. This bulletin board is right at the door and every one has to pass it going in and out of the main opening of that office.

Q. (By Judge Ransom) Are you speaking now about the bulletin board up in this engineering division office? A. That's true.

Q. That is it, it is just inside the door through which employees enter and by which they leave that division

S. M. 1182

3048

office? A. There is another entrance but that is the main one.

Q. And this is an open bulletin board on which any notices can be put up with a thumb tack? A. That's true.

Q. And it is the bulletin board of the division? A. That's right.

Q. It is not out in the general corridor, it is within the division office? A. That's true.

Q. Have you ever had any occasion to either post bulletins or notices of any kind on it or to seek permission to do so? A. No, sir.

Q. And you don't know who if anybody has it in charge? A. Well, I would be governed by—

Q. Well, do you know who, if anybody, in the division has it in charge? A. I don't think anyone is in charge of the bulletin board specifically.

Q. And you see on it from time to time posted notices of a character that relates to or might interest the employees? A. That's true, safety regulations and all that sort of thing.

Q. And social meetings of employees, groups? A. Yes.

S. M. 1183

3050

Q. And the like? A. Yes.

Q. (By Mr. Moscovitz) So you see company notices on the bulletin board, is that it? A. Yes.

Q. Can you tell me now the person in charge of the division on which this bulletin board appears? A. Mr. Brock.

Q. Would you say that the charge of the bulletin board as well as the charge of other paraphernalia and equipment—

Judge Ransom: I object to leading the witness, he testified he didn't know and doesn't have any idea about this.

3051

Trial Examiner Gates: He may answer.

The Witness: I have an idea of who is in charge, Mr. Brock would be the logical person to be responsible for that bulletin board.

Q. (By Judge Ransom) You assume that he is responsible for anything in the division? A. Within reason, yes.

Q. (By Mr. Moscovitz) It is the company's bulletin board, isn't it? A. Certainly.

Mr. Moscovitz: That's all.

Judge Ransom: That's all.

3052

Harry Spalding—For N.L.R.B.—Recross

Q. (By Trial Examiner Gates) Does Mr. Brock keep

S. M. 1184

track of your time or where do you report the time?

A. I send my time through to Mr. Dearman in the company mail each week.

Q. (By Judge Ransom) When you speak of company mail, you mean some system within the company by which communications for example between you and Mr. Dearman pass back and forth? A. That is true.

3053

Q. They don't go in the United States mail? A. No.

Q. It is an intercompany system? A. Yes.

Q. And messages from you to Mr. Dearman at the Mt. Vernon office or from him back to you of any character would be exchanged in that way? A. That is true.

Q. (By Trial Examiner Gates) This form, the notice of that meeting, is a form, mimeographed form, multi-graphed? A. Yes.

Q. Does your name appear on it? A. No, it is generally either written in or typed in separately.

Q. Do you recall how it was on this particular notice? A. No, I don't.

3054

Q. Was it on this? A. I don't know.

S. M. 1185

Q. It was handed to you? A. Yes. As usual they are passed from desk to desk and it turned up on my desk and I remember it.

Q. Did you initial it and pass it on? A. I don't know whether I initialed it or not.

Q. Did such things normally reach your desk? A. Yes.

Q. Any general notices in the office? A. Well, only things that are of general interest, there are some things

that are of no interest to myself and this other man and we do not receive those.

Trial Examiner Gates: That is all.

Q. (By Mr. Ransom) You don't know whether your name was on it or not? A. I don't know.

Q. Well, was this simply an otherwise blank sheet of paper on which the notice was mimeographed and then above that or below it the names are typed in or written in? A. No, the names are mimeographed in, I believe.

Q. The names of those who must go? A. Yes.

Q. And whatever information is contained in the notice is likewise mimeographed in? A. No.

S. M. 1186

Q. What's that? A. Typewritten.

Q. Typewritten? A. Yes.

Q. And I think you said that you don't know whether it bore any signature or identification? A. No, but all notices are supposed to be signed by the assistant or the engineer.

Q. But you have not any idea whether there was or not? A. No, I do not.

Trial Examiner Gates: Do you recall approximately the date of that meeting or can you testify as to that?

The Witness: I can't remember the exact date of that meeting.

Trial Examiner Gates: Do you remember the approximate date, when was it in relation to Mr. Carlisle's announcement? A. It was, as I remember it, about ten days later.

Judge Ransom: That will be the last of April or about May 1st?

3058

William J. Balch—For N.L.R.B.—Direct

The Witness: I can't remember just what date it was.

Trial Examiner Gates: That is all.

Judge Ransom: That is all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Balch.

3059 WILLIAM J. BALCH, called as a witness for the National Labor Relations Board, being first duly sworn, tes-

S. M. 1187

tified as follows:

DIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Where do you live? A. 2326 121st Street, College Point, Long Island.

Q. Who are you employed by? A. New York and Queens Electric Light and Power Company.

Q. How long have you been so employed? A. Since August 20th, 1930.

3060 Q. What kind of work are you doing? A. I am a clerk.

Q. In what department? A. The Elmhurst Overhead Distribution Department.

Q. Any division of the department? A. The overhead bureau.

Q. How long have you been in that division? A. Approximately seven months.

Q. Are you a member of any labor organization? A. I am.

Q. The E.U.R.W.? A. C.I.O., yes.

Q. C.I.O.? A. Yes.

William J. Balch—For N.L.R.B.—Direct

3061

Q. How long have you been a member of that organization? A. Since April, 1937.

Q. Before that were you a member of the I.B.E.W.?

S. M. 1188

A. No.

Q. Were you a member of the E.R.P.? A. Yes, sir.

Q. Until it went out of existence? A. Yes.

Q. Or at least until you learned that it was not being actively functioned, is that it? A. That's right.

Q. Do you know Mr.—strike that out please. Were you approached by anyone either before or after the E.R.P. became inactive while you were at work to become a member of the I.B.E.W.? A. I had a discussion with Mr. Albert Martini, a representative.

3062

Q. When was that? A. On May 12th.

Q. 1937? A. In the office.

Q. 1937? A. 1937.

Q. Yes. And was he a person regularly employed in your office? A. No, he was a lineman.

Q. A lineman? A. That's right.

Q. Supposed to work out in the field? A. That's correct.

3063

S. M. 1189

Q. Yes, what happened? A. Well, he was about, he entered the office for the purpose of collecting dues for the A.F.ofL.

Q. Yes. And as he was— A. As he was about to leave, I asked him if he could change a ten dollar bill. The purpose of that particular question was to find out if he had collected any dues, and he said that he had been only successful in collecting from three or four.

Q. In your office? A. Not only in the office but from anyone that he had called into the office.

3064

William J. Balch—For N.L.R.B.—Direct

Q. Yes, had he been calling persons into the office?

A. He had.

Q. You saw that? A. I did.

Q. In whose office was he in? A. Mr. Connelly's office.

Q. Who is Mr. Connelly? A. District superintendent.

Q. Did he have charge of the whole district? A. That's right, Elmhurst overhead.

Q. How many men under him approximately? A. Approximately 170 or 180 men.

3065

Q. Yes. Did you notice whether or not Mr. Martini

S. M. 1190

had with him at that time any application cards of the I.B.E.W.? A. At the moment of asking that question, he did not have the cards in his hand so far as I could see with him, but previous to that, he had them.

Q. On the same day. A. On the same day, in the office.

Q. When he was going into the office or while he was in the office? A. Well, while he was in the office because, as I returned from lunch, he asked me what I thought of the American Federation of Labor and I told him that my lunch hour was not up then and that afterwards I would come back and speak to him about it, so when I returned we continued the discussion.

3066

Q. In the office? A. In the office.

Q. Yes. A. So he again asked the question as to what I thought of the American Federation of Labor and I told him that the whole set-up smacked of company unionism.

Q. You mean the set-up in the particular plant, company? A. Not only in our company but throughout the whole system that the set-up of the American Federation of Labor as presented to us—

S. M. 1191

Q. You mean in the I.B.E.W.? A. That's right.

Q. Yes? A. Smacked of company unionism, that the same officers who were now in the company union were going to take over the reins and control the I.B.E.W.

Judge Ransom: I move to strike out the witness' argument in behalf of the C.I.O.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. I move to strike out his characterization of company union.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: That the previous contacts I had as an employee representative gave me sufficient information, knowledge about that employee representation plan to base an accurate observation and an accurate opinion.

Q. (By Mr. Moscovitz) How long had you been a representative of the E.R.P.? A. I was elected a representative on April 6th or April 12th, 1934, in the construction bureau and was chairman of the construction bureau, served on the department council.

S. M. 1192

Q. Will you continue telling us what conversation you had with Mr. Martini? A. I asked Mr. Martini why the general council, as a body, a representative body of all the employees, did not request the management for the right to grant the employees the right to vote and determine for themselves which organization they wished. He merely shrugged his shoulders, did not answer the question. I cannot recall all the conversation that took place at that time.

3070

William J. Balch—For N.L.R.B.—Direct

Q. Did you have any further conversation with him at any other time? A. I have had several discussions with him.

Q. How long did Mr. Martini remain in the office before you went out to lunch? A. He arrived at the office about ten or eleven and he remained there until shortly after two o'clock.

Q. And during that period of time, you noticed him calling persons in regarding the signing of I.B.E.W. cards. Is that right? A. That is correct.

3071

Q. Did he turn up at any time after that in the same office and do the same thing? A. He came into the office to obtain locations for the gangs out in the field.

Q. What do you mean, to obtain locations for the

S. M. 1193

gangs? A. Our office has all the information concerning the location of where the workmen were in the field and as Mr. Martini came in there for the purpose of obtaining that information—

Q. When was that? A. It was after that particular day, but the exact date I don't know.

3072

Q. I see. After May 12th; is that right? A. That's right.

Q. And to whom did he go to secure these locations? A. Why, he either went to the chief clerk, Mr. Curry, or he went to one of the general foremen. I don't recall particularly. I know he was in there but as to whom he spoke to particularly there, I couldn't say.

Q. Mr. Martini is still employed there? A. That's right.

Q. In what capacity? A. I believe he is listed as a second grade lineman. At least, his card shows that.

Q. What other work does he do at the present time, do you know? A. Besides lineman, I don't know. I know he is a lineman.

William J. Balch—For N.L.R.B.—Cross

3073

Q. Do you know whether or not he is now an employee representative of the I.B.E.W. local, or whether he has an official connection with the I.B.E.W. local? A. Outside of seeking to have men join, that is all I know

S. M. 1194

about him. I don't know whether he is a member or not.

Q. All you know is, he was engaged in this organization work at the time you stated. Is that right? A. That's correct.

Q. That's all.

3074

CROSS EXAMINATION:

Q. (By Mr. Ransom) Now, when did you join the C.I.O.? Can you fix the date? A. In April. The exact date was the day that the pledge cards were sent around by the employee representation plan. Mr. Martini had asked me.

Q. Now, I am just asking you for a date. Can we fix the date? Was the first part of April? A. I couldn't fix the date. I don't know.

Q. You cannot give the Board any better idea than that it was in April? A. It was in April.

Q. That is all you can say about it? A. Well, it was the same day the pledge cards were—

Q. Can you fix the date? A. I cannot.

Q. What are your duties as clerk? A. I handle material requisitions and all meter orders.

Q. And that is in the Elmhurst district office of the

3075

S. M. 1195

distribution department? A. That is correct.

Q. And you have been there seven months in that department? A. That's correct.

3076

William J. Balch—For N.L.R.B.—Cross.

Q. That is in overhead bureau? A. That's right.

Q. And before that, where were you employed? A. In the inventory bureau department.

Q. When were you transferred out of the inventory bureau? A. Well, approximately six or seven months previous to that.

Q. What happened to the inventory bureau? A. What happened to it?

Q. Yes. I mean, why were you transferred out of the inventory bureau? A. I asked to be transferred out of there.

3077

Q. You asked to be transferred? A. Yes.

Q. How many employees were there in that bureau when you left, or were transferred? A. Oh, there were quite a few.

Q. I mean, can you give any idea? A. That were left in the bureau?

Q. Yes. A. No, I don't know how many were left in the bureau.

Q. Haven't any idea? A. No.

S. M. 1196

3078

Q. Well, what work did you do in the inventory bureau? A. We transferred the information obtained in the field to what were known as B Sheet records.

Q. Who talked with you about joining the C.I.O.? A. Nobody.

Q. No one ever did? A. No.

Q. Were you in the inventory bureau at the time that you were elected to a bureau council under the E.R.P.? A. I was in that bureau and was elected as representative-at-large and also representative.

Q. Well, you were elected to what bureau council? A. The continuing property records bureau.

Q. That is, that continuing property records bureau had a council of its own? A. Yes.

Q. And the inventory department was in that bureau? A. Yes.

Q. At that time? A. That's right.

Q. So you were on both the bureau council and also on the department council? A. I was chairman of the department council.

Q. Of what department? A. The inventory department.

S. M. 1197

Q. And a member of the bureau council? A. That's right. 3080

Q. Is Mr. Curry the chief clerk of this district office of the overhead bureau? A. He is.

Q. That is the Elmhurst district? A. That's right.

Q. Do you know whether Mr. Curry is or is not a member of the C.I.O. or of the I.B.E.W.? A. He is a member of the I.B.E.W.

Q. You know that he is? A. I do, yes.

Q. Now, you referred to general foremen who were in that office at the time Mr. Martini came there. What general foremen did you have in mind? A. Well, there are usually three that are there. Now, I didn't specifically state that they were there at the time Mr. Martini came in. 3081

Q. The fact is, you don't know whether they were there? A. No, I said he could obtain his information from them if they were there or the chief clerk.

Q. That is, he might have gotten it from Mr. Curry or the general foreman? A. That's right, or from Mr. Conlan.

Q. And you don't know whether the general foremen

S. M. 1198

that you mentioned were or were not members of the

3082

William J. Balch—For N.L.R.B.—Cross

I.B.E.W.? A. I am quite sure that the general foremen are not members of the I.B.E.W.

Q. And you can't give their names, the ones that were there when Mr. Martini came in? A. No.

Q. You can't give names? A. No, sir.

Q. When you held office under the E.R.P., you were nominated by the employees in the inventory department? A. That's correct.

Q. And elected by them? A. Yes, sir.

3083

Q. And you were elected by your bureau chairman, or you were elected bureau chairman by the bureau council? A. That's right, yes, well, there was only two members, that is all.

Q. Yes, and how many members were there of this council of which you were chairman? A. Two.

Q. You yourself and one other? A. That's right.

Q. And you were chairman of both of them? A. I was.

Q. In 1935, you weren't a candidate for election, were

S. M. 1199

you? A. 1935?

3084

Q. Yes. A. I was not a candidate, but they elected me anyway.

Q. And did you serve? A. No, sir.

Q. You declined to serve and someone was selected? A. Someone else, yes, was selected, he received about four votes, I guess.

Q. Were you a candidate in '36? A. No, sir.

Q. You don't know, do you, whether temporary elections of officers had taken place in the I.B.E.W. local?

A. Do I know of it?

Q. Do you know whether they had temporary elections? A. It was my understanding that nominations were held last night.

Frank J. Brady—For N.L.R.B.—Direct

3085

Q. Well, that was for the permanent officers? A. You mean the temporary?

Q. The nominations as you understand it, that were made last night, were they temporary officers? A. Well, I am not familiar with all the activities of the I.B.E.W.

Q. Well, that is excusable, that is, you don't know whether the nominations that were made by the local last night were for temporary or permanent officers?

S. M. 1200

A. No, I do not.

3086

Judge Ransom: That's all.

Trial Examiner Gates: That is all.

(Witness excused.)

FRANK J. BRADY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 28 3087
Carroll St., Yonkers, N. Y.

Q. Who are you employed by at the present time?
A. The Yonkers Electric Light & Power Company.

Q. What kind of work are you doing? A. At the present time I am in the Mt. Vernon office of the Westchester Lighting Company, working on fixed capital work, I believe my title is inventory engineer.

Q. What is the department? A. C.P.R. engineering department.

Q. How long have you been employed there? A. I have been there for three months.

Q. How long have you worked for the company?
A. Eight years.

3088

Frank J. Brady—For N.L.R.B.—Direct

Q. Are you a member of any labor organization?
 A. I am a member, at the present time I am chairman of the Independent Gas & Electrical organization.

S. M. 1201

Q. Chairman of the whole organization? A. That's right.

Q. How long have you been a member of that organization? A. Approximately seven weeks.

3089

Q. How long have you been chairman? A. Approximately the same time, seven weeks.

Q. Are you a member of any other labor organization? A. No, sir, I am not.

Q. Were you a member of any other labor organization before you became a member of the independent organization? A. I was vice-chairman of the general council of the E.R.P.

Q. How long were you vice-chairman? A. Vice-chairman for just approximately a month.

Q. How long were you a member of the E.R.P.? A. I was a member of the E.R.P. for four years.

3090

Q. Before becoming a member of the Independent Gas Works organization, were you called into the office of the president of your company? A. Before becoming a member of the Independent Gas & Electric Union I was called into the office of Mr. Prizzano, who is the president of the Westchester Lighting Company and Yonkers Electric Light & Power Company.

Q. Do you recall the date? A. It was approximately two days after Mr. Carlisle had recognized the American Federation of Labor, the I.B.E.W.

S. M. 1202

Q. That was in April, 1937? A. That's right.

Q. And you were called in by Mr. Prizzano himself?
 A. I was not.

Frank J. Brady—For N.L.R.B.—Direct

3091

Q. Tell us how you got in there. A. I went into Mr. Prizzano's office myself, and Mr. Drury and Mr. Newman; Mr. Newman was the secretary of the E.R.P. and Mr. Drury was the chairman of the E.R.P. At that time I was contacted by Mr. Drury and Mr. Drury asked me to go to Mr. Prizzano's office.

We went to Mr. Prizzano.

Q. Did Drury tell you why you were to go? A. No, I had a pretty good idea, though, because the day previous I was down on 15th Street and I knew what had happened.

3092

Q. What happened the day previous to that on 15th Street? A. Down on 15th Street, that was the day, I believe, after Mr. Carlisle had recognized the American Federation of Labor and the employees, that is, the E.R.P., was in a heated discussion as to whether they should join the I.B.E.W. or whether they should have an organization of their own. They did not come to any definite conclusion at that time. That was the last contact I had with them.

Q. Where was this heated discussion taking place?

A. It was held in the council room, I believe, of the

S. M. 1203

3093

E.R.P. on 15th Street, although I am not positive, I did not know.

Q. You are not positive of the address? A. That's right.

Q. Were you there? A. I was at 15th Street.

Q. Is that company property? A. The Consolidated Edison Company building.

Q. Was it just a meeting of the employees who belonged to the plan, or were there supervisory employees there, too? A. Well, as far as I know it was just employees that belonged to the plan, I did not see anybody in a supervisory capacity at that time.

3094

Frank J. Brady—For N.L.R.B.—Direct

Q. It was called as a result of the announcement made by Mr. Carlisle? A. That's right.

Q. All right, tell us what took place when you go to Mr. Prizzano's office? A. Well, when we got into Mr. Prizzano's office we got talking about recognition of the I.B.E.W. by Mr. Carlisle.

Q. Who got talking about it? A. Mr. Prizzano and myself and Mr. Drury and Mr. Newman.

Q. Well, I wish, if you could, be a little more specific about how the meeting started. A. How it started?

3095

S. M. 1204

Q. Yes, who did the opening of the questions? A. Well, we contacted Mr. Prizzano at first, that is, we opened the conversation when we got in there.

Q. When you say "we," do you mean you or Mr. Drury or who? A. Well, I would say Mr. Drury, speaking for the other two men, he was the chairman, of course, Mr. Drury told him at that time that he did not see why we could not have an independent organization of our own and that was entirely my thought at the time, and I also brought that out to Mr. Prizzano.

3096

Mr. Prizzano said that the independent union at that time was out of the picture, he said that Mr. Carlisle had seen fit to recognize the American Federation of Labor and he thought that we should do likewise, and I believe that's about all that transpired at that meeting with him.

Q. All right, that's the only meeting you ever had with him? A. That's right.

Q. All right, you left then, is that right? A. That's right.

Q. What did you do then? A. I went back to my office, that is the men I represent, I represent the engineering department in Yonkers, having come from there previous to being in the C.P.R., I went back there

and I called a meeting of my men to find out their sentiments.

S. M. 1205

Q. How many men? A. 32 men.

Q. Yes. A. I took a vote in the engineering department to find out whether they wanted an independent local, the C.I.O. or the I.B.E.W. and the men at that time voted 100 per cent independent, no dissenting vote.

Q. Then, did you leave, A. That's right.

Q. What happened after you left, if you know? A. After I left the office I went back to Mt. Vernon and I came back again in the afternoon, and that afternoon when I got back there I found Mr. John H. Zoller distributing cards.

3098

Q. Who is Mr. John H. Zoller? A. Mr. John H. Zoller is distribution engineer of the Yonkers Electric Light & Power Company, distributing cards for the I.B.E.W.

Q. Is his position a supervisory one? A. Yes.

Q. In what respect is it supervisory? A. Why, as far as I know, as far as I understand it, he had charge of the Yonker System.

3099

Q. The entire system? A. That's right, the distribution work.

S. M. 1206

Q. How many men? A. That I don't know, I imagine about 350.

Q. What was he doing? A. He was distributing cards for the I.B.E.W.

Q. Where was he distributing? A. At the engineering department, 45 South Broadway, Yonkers.

Q. What did he do with the cards, do you know?

3100

Frank J. Brady—For N.L.R.B.—Direct

Did you notice whether or not any of the men signed them and gave them back to him? A. Yes, they did.

Q. All of them or just some of them? A. Well, I would say all of them.

Q. What did he do with the cards, do you know? A. He took them back to Mt. Vernon with him and turned them over to George B. Cornell, who is chief engineer of the Westchester Lighting & Power Company and the Yonkers Electric Light & Power Company.

3101 Q. What was done with the cards then? A. I don't know. They remained in Mr. Cornell's office as far as I know.

Q. Do you know whether or not any of the applications for the I.B.E.W. were typed in the company office? A. Yes; they were.

S. M. 1207

Q. When was that? A. I don't know the exact date, the early part of May.

Q. May, 1937? A. That's right.

Q. Tell us about that. A. One of the girls in the office, a girl by the name of Doherty, she typed the cards at that time.

3102

Q. Is that Geraldine Doherty? A. Yes.

Q. Did you see that? A. I witnessed it.

Q. How did it come about; who was there? A. At the time the cards were typed?

Q. Yes. A. I believe everybody in the office was there.

Q. The foremen or the supervisory employees? A. That's right.

Q. Were employees being called in to sign up? A. At that time?

Q. Yes. A. No, sir.

Q. Who was she typing the cards up for? A. She

Frank J. Brady—For N.L.R.B.—Direct

3103

was typing them up for the employees, that is, she was typing the employees' names on the I.B.E.W. cards.

Q. Then, who would she give the cards to? A. The cards went in to Mr. Geissler.

S. M. 1208

Q. Who is Mr. Geissler? A. Mr. Geissler is one of the engineers. I believe he is a chief engineer in Westchester.

Q. I see. And was she using information regarding the employees whose names she typed on the cards from personnel records of the company? A. Not from the personnel records, but she had a typed sheet which she was taking it off from.

3104

Q. That information was secured from the personnel files? A. It possibly could come from there.

Q. Do you know? A. I couldn't say.

Q. All right. Did you notice whether or not at any time after this incident I.B.E.W. cards were circulated among the men while at work by any supervisory employee? A. No, sir, I can't say that I did.

Q. Do you know whether or not any requests were made of the men to become members of the I.B.E.W. after that? A. Mr. Zoller requested that I become a member of the I.B.E.W.

3105

Q. When was that? A. That was also in the early part of May.

Q. 1937? A. 1937.

S. M. 1209

Q. Tell us about it. A. I called in to Mr.—I was called into Mr. Zoller's office and he asked me if I wanted to sign up, he told me I was the last man in the department, and he asked me if I would like to sign a card.

3103

Frank J. Brady—For N.L.R.B.—Direct

Naturally, I said I didn't. I said I didn't want to belong to the I.B.E.W., and the discussion ended there. He said no more to me.

Q. Do you know Sam Unger? A. Not Sam Unger. I know Fritz Unger,

Q. Where is he employed? A. He is employed by the Westchester Lighting Company in the engineering division.

Q. What doing? A. I believe he is in the estimating.

3107

Q. Do you know whether or not he has been collecting dues for the I.B.E.W.? A. Yes, he has.

Q. When did you see him collecting dues? A. I saw him on company time in the early part of May. I can't give you the exact dates on that.

Q. Where did you see him? A. In the engineering department of the Westchester Lighting Company and the G. O. Building, on First Avenue and First Street, Mt. Vernon.

Q. Was it done in the presence of general foremen or

S. M. 1210

3108

supervisory employees of any kind? A. I can't say that they were watching him, but they were there.

Q. Do you know whether or not any other persons were doing the same thing? A. Yes, there was another gentleman by the name of Zucco.

Q. Was he doing the same thing? A. Yes.

Q. About the same time? A. Yes.

Q. In the same place? A. That's right.

Q. Both men working at the same particular period of time. Is that right? A. Yes.

Q. Do you know whether or not they collected any dues? A. Well, I can't say that I saw the dues being actually paid.

Frank J. Brady—For N.L.R.B.—Direct

3109

Q. Has there been any discussion with you by any one recently— A. Recently?

Q. About the continuation of the E.R.P.? A. No, I can't say that there has.

Q. After the announcement from Mr. Carlisle about the I.B.E.W., was there any discussion with you or any one regarding the continuation of the E.R.P.? A. I can't say that I recall any.

S. M. 1211

Q. Any statement as to whether or not campaigning would be permitted any longer from the E.R.P.? A. Well, as far as that statement, Mr. George B. Cornell, who was the chief engineer of the Yonkers Electric Light & Power Company and the Westchester Lighting Company, he come down to my desk in the engineering department—

3110

Q. When? A. The second week in May, 1937, approximately.

Q. Yes. A. He told me at that time that if I didn't stop my campaigning for an independent local union, he would have to ask for my resignation.

Q. Had you been doing that? A. No, sir, I had not, I told him I had not, but he told me that I was campaigning on company time.

3111

Q. Had you been campaigning on company time? A. No, sir, I had not, although I had been accused of it. I told him I had not been campaigning on company time.

Q. Did you make any statement to him about any other organization? A. I told him that if the I.B.E.W. was to be allowed to continue its activity, I didn't see why I shouldn't be allowed to continue mine.

Q. What did he say? A. He didn't give me any definite answer.

3112

Frank J. Brady—For N.L.R.B.—Direct

S. M. 1212

Q. He left? A. That's right.

Q. And did you refer before to Mr. John Drury? A. Mr. James Drury.

Q. Yes, and did you refer to John Murphy? A. No, sir, I did not.

Q. Who is John Murphy? A. John Murphy is an employee of the Consumers Service department in the Westchester Lighting Company.

3113 Q. At the present time? What kind of work is he employed to do? A. At the present time?

Q. No, as a consumer service employee? A. I don't know.

Q. Was he a member of the E.R.P.? A. Yes.

Q. In what capacity? A. Representative of the department council.

Q. And you testified that Mr. Drury was chairman of the Yonkers council? A. That's right.

Q. Do you know what they are doing at the present time? A. At the present time Mr. Drury and Mr. Murphy are employed as business agents for the I.B.E.W.

3114 S. M. 1213

Q. What local? A. Local B-832.

Q. Do you know whether or not either one of them took any leave of absence from the company? A. Yes, I do. Mr. Drury told me he was given leave of absence from the company to organize for the I.B.E.W.

Q. When was that? A. I can't remember my dates very well, but it was the early part of May.

Q. How long was his leave for? A. He told me at the time for one month, but he hasn't come back to work as yet.

Q. How about Mr. Murphy, do you know about him?

Frank J. Brady—For N.L.R.B.—Cross

3115

A. I know—that is, I understand—Mr. Murphy is acting under the same, that the same—

Q. Leave of absence arrangement? A. That's right.

Q. But he didn't make any statement to you about it as Mr. Drury did, is that right? A. That's right.

Mr. Moscovitz: That's all.

By the way, you are still employed, aren't you?

The Witness: Yes, I was when I left this morning.

Judge Ransom: It is one o'clock, Mr. Examiner, may we suspend at this time?

3116

Trial Examiner Gates: We will suspend now

S. M. 1214

until two o'clock, if you wish.

(Whereupon, at 1:00 o'clock p.m., an adjournment was taken until two o'clock of the same day.)

AFTERNOON SESSION

FRANK J. BRADY resumed the stand.

3117

Cross Examination:

Q. (By Mr. Ransom) When did you first go with the Yonkers Electric Light & Power Company as an employee? A. 1929.

Q. What kind of work? A. I was employed in the engineering department as a stenographer.

Q. As a what? A. A stenographer, in the engineering department.

Q. And how long did you continue at that work? A. One year.

Q. Then what? A. Clerk in the engineering department.

3118

Frank J. Brady—For N.L.R.B.—Cross

Q. How long? A. About two years.

Q. Then what? A. Estimator in the same department.

S. M. 1215

Q. Estimating on what? A. Estimating overhead and underground jobs.

Q. Then what was your next employment? A. Then I went into the C.P.R. department of the engineering department in Mt. Vernon.

3119

Q. What is the C.P.R. division? A. Just what it is?

Q. I mean, the Examiner probably is not as familiar as you and I might be with that. A. It is a continuing property record. My position in that department is analyzing overhead construction records that come in from the field, pole line work and so forth.

Q. And you have been in that work how long? A. About three months.

Q. What is your title now, payroll title? A. I believe my title, payroll title, is inventory engineer, but I cannot say, I am not positive, in other words.

3120

Q. What is your rate of pay per week? A. I don't know whether I should answer that here.

Q. You would rather not give it— A. I would rather not.

Judge Ransom: All right, then, I withdraw it.

Q. (By Mr. Ransom) You were vice-president of the general council of the employees representation plan for what company. A. The Yonkers Electric Light & Power Company.

S. M. 1216

Q. Under the employees representation plan as it was in force, there were separate plans and separate elec-

tions and councils for the Yonkers Company and the Westchester Company? A. That's right.

Q. And the I.B.E.W. organization, as you understand it, there is one local in Westchester County? A. That's right.

Q. And that embraces employees in both companies? A. Yes, sir.

Q. Now, you were present, you said, at the meeting at 15th Street on April 21st, which was attended by the members of the general councils of the various companies? A. That's right.

3122

Q. Do you recall if a committee was appointed to wait upon Mr. Carlisle and ask him to appear and answer some questions? A. No, sir, I don't, I was not down there that day.

Q. You were not there that day? A. No, sir.

Q. You were there the day before? A. I was there the day that Mr. Ganley had contacted the I.B.E.W., I don't know whether it was the day before or not. I mean, I don't know.

Q. Well, you weren't present on either of the two days when Mr. Carlisle spoke to representatives of the

3123

S. M. 1217

E.R.P.? A. No, sir, I was not.

Q. Then the day that you were there was probably the 22nd of April? A. It probably was around that date.

Q. And was that the same day that the members of the former general council of Yonkers, of the Yonkers Company, went to see Mr. Prizzano? A. The members did not go, just the three of us went.

Q. I said the day that the three of you went? A. I believe it was the same day.

Q. Yes, do you know whether Mr. Drury, who was then your chairman, had attended these meetings at 15th

3124

Frank J. Brady—For N.L.R.B.—Cross

Street on the two previous days? A. No, sir, I do not.

Q. Had Mr. Drury made any report to the general council of the Yonkers employees as to what had been stated by Mr. Carlisle on the two preceding days? A. No, sir, he did not.

Q. He had given you no information about it? A. No, sir.

Q. Have you read the newspapers? A. I read something in the newspapers, but I don't recall what it was.

3125

Q. Well, then, was the first information that you had that Yonkers general council was no longer to be dealt

S. M. 1218,

with in collective bargaining, was that the first information that you had on that received by you on April 22nd, the day that you went— A. I don't believe that statement was ever made to me personally. It may have been made to others.

Q. But the statement was made to you that any independent union was out of the picture? A. That's right.

3126

Q. Did Mr. Pizzano say anything to you as to why the Westchester Lighting Company or the Yonkers Electric Light & Power Company could not continue to bargain collectively with the general councils of the Westchester or Yonkers Companies? A. Yes, he told me it was against the Doyle-Neustein Bill, which was shortly to be passed. In other words, it was going through one of the houses, I believe, at that time.

Q. Was this meeting that you called of the employees in the engineering department of the Yonkers Company on this same day, April 22nd? A. I believe it was, in the afternoon.

Q. You referred to a Mr. Zoller as one of the district engineers of the Yonkers Company. Do you know whether Mr. Zoller was and is a member of the I.B.E.W.?

A. Mr. Zoller is the only distribution engineer in the Yonkers Company and is not a member of the I.B.E.W.

S. M. 1219

Q. You think he is not a member? A. That's right.

Q. Mr. Zucco, whom you spoke of as collecting dues. Do you know whether he is a member? A. Yes, he is.

Q. And, of course, Mr. Drury and Mr. John Murphy are members? A. Yes.

Q. And Mr. Unger? A. That is correct.

Q. The request to you to join the I.B.E.W. was made by Mr. Zoller? A. That's right.

Q. Do you know whether he has any official relationship, that is, holds any office under the temporary organization of the Westchester Local of the I.B.E.W.? A. Who are you referring to?

Q. Mr. Zoller? A. Mr. Zoller?

Q. Yes. A. Mr. Zoller is the distribution engineer.

Q. Well, your answer is that he is not a— A. He is not a member of the I.B.E.W.

Q. I see. Miss Geraldine Doherty, whom you saw typing the applications,—do you know whether she is a

3128

3129

S. M. 1220

member or not? A. I can't say for sure that she is.

Q. Was it your understanding that she is? A. It is my understanding that all the girls in the office were signed up with the I.B.E.W.

Q. What office are you now speaking about? A. The engineering department at the Westchester Lighting Company.

Q. That is at the Mt. Vernon office building? A. That's right.

Q. Is that right? A. That's right.

3130

Frank J. Brady—For N.L.R.B.—Cross

Q. Did you see this typewritten list of names which she was typing of applications? A. Yes, I did.

Q. Have you any idea from what source it came, are you able to say? A. No, sir.

Q. Do I correctly understand you to state that Mr. George B. Cornell accused you of working for the independent union of gas and electric companies or employees on company time? A. That's right.

Q. Will you state that date, about when that conversation took place? A. I stated it was about the second

3131

S. M. 1221

week in May, or thereabouts.

Q. And he said that if you did not stop doing that work on company time, he would have to ask for your resignation? A. That's right.

Q. You have not been doing any work in behalf of that union on company time, have you? A. No, sir, I have not.

Q. Mr. Cornell has not asked for your resignation? A. No, sir.

3132

Q. And you have continued ever since in your regular work? A. Yes, sir.

Q. How many members has the Independent Gas & Electric Union of employees in Westchester County?

Mr. Moscovitz: I object to that, Mr. Examiner, I don't see that it has any relevancy to the issue before us.

Judge Ransom: They were brought in the case by Mr. Moscovitz on direct examination, although they were excluded from this proceeding upon his objection.

Mr. Moscovitz: They were excluded from the proceeding because of certain reasons that I ad-

Frank J. Brady—For N.L.R.B.—Cross

3133

vanced at that time, none of which had anything to do with the amount of membership. This witness is being called to give testimony which has nothing to do with the question of membership. It can do no more than embarrass or perhaps embarrass the organization or perhaps disclose in-

S. M. 1222

formation which might at a subsequent time be used to the organization's disadvantage.

Trial Examiner Gates: Objection sustained.

3134

Judge Ransom: Exception.

Q. (By Mr. Ransom) You spoke of 32 men or thereabouts as present at this meeting which you called in the engineers' department in Yonkers on the afternoon of April 22nd; are you able to state how many of them are now members of the I.B.E.W.? A. I can state definitely that 32 have signed cards, but none of them have paid their initiation fee.

Judge Ransom: That's all.

Mr. Moscovitz: That's all.

Trial Examiner Gates: I have one question.

3135

Mr. Moscovitz: I am sorry.

Examination by the Trial Examiner:

Q. (By Trial Examiner Gates) In connection with these cards that you saw typed out, do you know at whose request they were being typed? A. Who requested them?

Q. Yes. A. No, I could not answer that.

Q. Do you know whether the various employees requested the young lady to type them? A. Well, I don't think so because she was typing.

3136

Frank J. Brady—For N.L.R.B.—Cross

S. M. 1223

Q. I beg your pardon. A. She had a bunch of them on her desk, so I don't know whether they were requested individually or by some person.

Q. From a list? A. Yes.

Q. On company time? A. That's right.

Trial Examiner Gates: That's all.

3137

Q. (By Mr. Ransom) You don't know whether that list was a list of people who had signed up cards in some incorrect form or whether they were persons who had not yet signed cards at all, do you? A. The cards were signed by the men at the time.

Q. These were being filled in? A. They were being filled in, yes, sir.

Q. As these were cards on which employees had already signed their names? A. That's right.

Q. And Miss Doherty was filling in from some list or other information required by the application? A. That's right.

Q. As to department and title and whatever was required? A. The department and so on.

3138

Trial Examiner Gates: Who was superintending?

The Witness: Mr. Geissler.

Trial Examiner Gates: That is all.

(Witness excused.)

S. M. 1224

Mr. Moscovitz: I will call Miss Misbach.

Eleanor Misbach—For N.L.R.B.—Direct

3139

ELEANOR MISBACH, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Miss Misbach? A. 4650 Kisskuna Boulevard, Flushing.

Q. Flushing, Long Island? A. That's right.

Q. Are you presently employed by the Consolidated Edison Company? A. The New York & Queens Electric Light & Power Company.

3140

Q. How long have you worked for the company? A. 8 years. July 5th.

Q. What kind of work do you do there? A. First grade clerk, consumers accounting bureau.

Q. Yes, who is your superior? A. J. J. Smith.

Judge Ransom: What's the name?

The Witness: J. J. Smith.

Q. (By Mr. Moscovitz) How many other employees are there in your department? A. In the whole consumers accounting bureau?

Q. The bureau, yes. A. About 450.

3141

S. M. 1225

Q. Do you work in any division of that bureau? A. Yes, I do.

Q. What one? A. I work in a unit.

Q. What is the unit? A. Unit No. 2.

Q. How long have you been in that unit? A. Since May 8th.

Q. 1937? A. 1937.

Q. Now, were you— A. On May 12, 1937.

Q. Were you transferred to it, then, when it was

3142

Eleanor Misbach—For N.L.R.B.—Direct

moved downstairs? A. Yes, when it was moved during the change of system.

Q. Who was your superior in the present unit? A. Mr. Smith.

Judge Ransom: I didn't get the name of the unit.

The Witness: Unit No. 2.

Judge Ransom: Unit No. 2?

The Witness: Yes.

3143

Q. (By Mr. Moscovitz) What work were you doing before you were transferred to unit No. 2? A. I was in the extending division of the consumers' accounting bureau.

S. M. 1226

Q. Where is that building located? A. Bridge Plaza, Long Island City.

Q. And was there the same person, was the same person your superior at that time? A. Yes, that's right.

Q. Do you know Helen Seldon? A. Yes, I do.

Q. Is she in Unit No. 2? A. No, she is not.

3144

Q. But she was employed in the department from which you were transferred? A. That's right.

Q. Is that right? A. Yes.

Q. What was her work? A. Her duties were to give out the work, to distribute the work.

Q. Would she distribute the work to you? A. Yes, she did.

Q. She was in charge of your work? A. No, she wasn't in charge, she distributed the work.

Q. I see, who was her boss? A. Vincent Latronika.

Judge Ransom: Who?

The Witness: Vincent Latronika.

S. M. 1227

Q. (By Mr. Moscovitz) Do you know what his title was? A. Clerk in charge.

Q. Was she is assistant? A. No, she was not his assistant, she was a first grade clerk.

Q. The same grade that you have? A. That is right.

Q. What kind of work did you do in the months preceding your transfer? A. What kind of work I did?

Q. Yes. A. I did extending work, billing consumers, the actual reading of the meters on the ledger, transferring it onto the ledger, and sending out the bills and skipping.

3146

Q. What are skips? A. Those are skip readings, when a consumer is out, why you have a skip reading come in and then you re-bill them again.

Q. What else? A. Well, that was for about two weeks.

Q. Two weeks prior to your transfer? A. That's right.

Q. Yes. A. And for the remainder of that two weeks, I worked on that I.B.E.W.

S. M. 1228

3147

Q. You mean— A. Distributed cards.

Q. Was that before your transfer? A. Before I was transferred. I had gotten permission to do that, due to the fact that the E.R.P. was not out of existence at that time.

Q. Did you distribute I.B.E.W. cards all during the month of April? A. No.

Q. The month of April—most of the month of April? A. No, just for approximately two weeks.

Q. You did it two weeks preceding your transfer? A. Preceding, until the 8th of May I was transferred.

3148

Eleanor Misbach—For N.L.R.B.—Direct

Q. I see, and when did—when you did that work, did you get your regular pay? A. Yes, I did.

Q. How was your time indicated, as doing company business? A. Company business.

Q. Now, I show you a photostatic copy of your employment record for the month of April and May, 1937, up to the time when you were transferred, and ask you if you will look at it. A. Uh, huh.

Mr. Moscovitz: May I have it marked for identification?

3149

S. M. 1229

(Document referred to was marked Board's Exhibit No. 17 for Identification, Witness Misbach.)

Q. (By Mr. Moscovitz) I show you Board's Exhibit No. 17 marked for Identification, and ask you if this is the employment record for you for the month of April and the month of May, 1937, up to the time you were transferred into Unit No. 2? A. Well, I have never seen one of these before, but that is the kind of work I do, I know that, skips and miscellaneous, and hours, company business. That's right, that's right, transferred to the unit system.

3150

Q. And shows your transfer as of May 10th? A. Was it the 10th? I didn't know whether it was the 10th or the 8th. It must have been on a Monday.

Q. Yes. Now, you will notice that under the heading, "Miscellaneous"— A. Yes.

Q. There are indications of company business? A. Oh, yes, but that can be different, too.

Q. Now, when did the company business to which you refer start? A. Here—

Q. April 25th? A. It must have been that. That is a straight day.

Eleanor Misbach—For N.L.R.B.—Direct

3151

S. M. 1230

Q. April 26th up until you were transferred? A. Yes.

Q. The last working day indicated on this list being May 7th, right? A. Right.

Q. All right.

Mr. Moscovitz: I offer this at this time, Mr. Examiner.

Judge Ransom: No objection.

Trial Examiner Gates: It may be admitted.

(Document previously marked Board's Exhibit 17 for Identification received in evidence, Witness Misbach.) 3152

Q. (By Mr. Moscovitz) Now, you testified that the period of time indicated was spent distributing I.B.E.W. cards? A. Yes.

Q. Now, before you distributed I.B.E.W. cards, were you a member of the employee representation plan? A. Yes, I was.

Q. Were you a member of any other labor organization? A. No.

Q. How long had you been a member of the plan? A. The last two years, 1934-'35. 3153

Q. Did you hold any official position? A. No, I was just secretary of our bureau council and on the welfare committee.

Judge Ransom: What committee?

The Witness: The welfare.

S. M. 1231

Q. (By Mr. Moscovitz) And at the time you started distributing these cards, were you still a member of the plan? A. Yes, I was.

3154

Eleanor Misbach—For N.L.R.B.—Direct

Q. And were you at that time a member of the I.B.E.W.? A. Yes, I was.

Q. When did you become a member? A. Let's see—I guess I had been notified about a week later, maybe a couple of days. I don't remember now offhand. I was one of the original members, if that is what you mean, a charter member of our local.

Q. What is your local? A. 839.

3155

Q. Where did you become a member? A. We had a meeting on a Saturday morning, let me see—oh, at a mass meeting, about 96 representatives, 80 to 96.

Q. Representatives of the plan? A. Of the plan.

Q. Where? A. Over in the meter reading building in Long Island City. That included everybody, Flushing and all, to decide about the plan.

Q. When was that? A. I think that must have been around the beginning of April.

S. M. 1232

Q. About the start of April? A. Yes.

Q. After you heard that Mr. Carlisle had recognized the I. B. E. W.? A. That is about it.

3156

Q. After the period when it appeared in the newspapers? A. That's right.

Q. Not before? A. No.

Q. All right. And from whom had you received word to attend? A. My bureau chairman.

Q. Who was that? A. Mr. Carey.

Q. Yes. And he is your what? A. Bureau council chairman.

Q. What is his job? A. In the company?

Q. Yes. A. Well, at present, now, he is temporary chairman of the I.B.E.W.

Q. The same local that you belong to? A. That's right.

Eleanor Misbach—For N.L.R.B.—Direct

3157

Q. What was his job at the time he gave you word to attend this mass meeting. A. At that time he was chairman of the general council of the E.R.P.

S. M. 1233

Q. Yes. And did you secure permission from your supervisory employee to attend? A. This meeting?

Q. Yes. A. This meeting it was understood was just that E.R.P. was going out, we were still in existence at that time.

Q. So you did not have to get permission? A. That's right.

3158

Q. It had been your practice whenever necessary to attend without permission, is that right? A. Oh, no, I always asked for permission of even the E.R.P. meeting, too.

Q. But this was one you did not ask that? A. No, I had been told I could go by our general chairman and that was good enough for me.

Q. That was good enough for you? A. Yes.

Q. How long were you at that meeting? A. Until about 11:30.

Q. When did it start? A. They started at nine o'clock.

3159

Q. Was it time spent on company business, so-called? A. In this way it was, yes, it was for the welfare of the employees and everybody knew what they wanted to do.

Q. Now, before this, when you did employee repre-

S. M. 1234

sentation work, during the period of time that you were a member of it, was the time spent by you in that work listed on your record as company business? A. When I did that, yes.

Q. And that was time for which you were paid? Is that right? A. That's right.

3160

Eleanor Misbach—For N.L.R.B.—Direct

Q. And that practice continued during the period of time that you were doing I.B.E.W. work. Is that right? Until your transfer to Unit No. 2? A. That's right.

S. M. 1235

3161

Q. All right now, I have here too, Miss Misbach, three other photostatic copies which give an account of your employment record for October and December, 1936, and February, 1937, I would ask you to look at the three of them and you will find there a miscellaneous heading with company business indications thereunder; will you tell me whether or not those indications are for time spent in your employee representation work and if these three copies aren't a good sample of the period of time spent in that work?

Judge Ransom: Well, I think, Mr. Moscovitz you will find that on those sheets there are other months than those you specified, I think that makes a continuous record from October.

Mr. Moscovitz: All right.

3162

The Witness: I am confused on October, here, all this is not E.R.P. company business. I happened to have charge of the bowling too and that is when the season starts.

Mr. Moscovitz: Are you a bowler?

The Witness: A little bit, and I have got time off to go to various meetings for to organize it, that is an employees' association activity naturally, and October is just at the peak when we started, so you could not take that off the company's records. It is and it isn't.

Q. (By Mr. Moscovitz) Yes, and then again no. A. That goes all the way through until March so I guess.

S. M. 1236

they are all classified as one. I have never seen any sheet like that before.

Mr. Moscovitz: I will offer these as one exhibit.

(Documents referred to were marked Board's Exhibit No. 18-a, 18-b, 18-c, received in evidence, Witness Misbach.)

Mr. Moscovitz: Did you stop circulating the I.B.E.W. cards after you were transferred into Unit No. 2? 3164

The Witness: Yes.

Q. (By Mr. Moscovitz) Upon transfer you ceased? A. I ceased.

Q. And was your circularization of these cards in the department in which you worked? A. That's right.

Q. You secured membership for the I.B.E.W.? A. That's right.

Q. And it was during the working hours of those employees? A. That's right.

Q. You went from person to person in an effort to secure membership? A. Yes. 3165

Q. Is that right? A. Yes.

Q. Did you also collect dues from these people? A. Yes, I collect dues.

Q. And was that during that same period of time? A. Same period of time.

S. M. 1237

Mr. Moscovitz: That's all.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Your work in 1936 and 1937 at

3166

Eleanor Misbach—For N.L.R.B.—Cross

least was in the consumers' accounting? A. That's right.

Q. Prior to May 10th, your department of work, was that of the extending division? A. That's right.

Q. Does that work consist of taking the meter readings off the meter readers books and making out bills? A. That's right.

Q. Did that work include both reading and what are known as skip readings, regular readings and skip readings. A. It did.

3167 Q. You worked on both? A. That's right, on both.

Q. Now, this transfer that has been referred to as of May 10th of this year, did that involve any change in the nature of your work or was it only a change in the form of organization of the work? A. No. With this transfer we more or less went back to the old system in the unit, we followed the work all the way through instead of just doing extending, we sent out the bills and make up our vouchers, different routine altogether.

Q. Well, it was a general change in the department

S. M. 1238

3168 in the method of making out bills? A. That's right, the same thing.

Q. But you still were on consumers' accounting? A. Yes, still consumers' accounting.

Q. And the change was instead of your only doing the work of extending, you followed the bill transaction all the way through? A. That's right.

Q. When did you become secretary of your bureau council? A. 1935.

Q. And you were nominated and elected by employees in your bureau that year? A. That's right.

Q. Now, what bureau council was that? A. Consumers' accounting.

Q. What department was it? A. Accounting department.

Q. That was in the accounting department? A. Yes.

Q. Were you a member of anything higher than the bureau council? A. I don't know—

Q. I mean were you a member of the department council? A. Oh, no.

Q. You were not a member of the general council?

A. No, I wasn't.

S. M. 1239

3170

Q. In the course of your duties for the company and quite aside from the E.R.P., did you perform duties in respect of employees welfare work? A. I did.

Q. You refer to what was called an employees association; is that in any way identified with the E.R.P.? A. No; that is two independent organizations.

Q. That is, the employees association, is not a collective bargaining agency? A. No.

Q. Does the employees association of the New York and Queens Electric Light and Power Company carry on various welfare and recreational activities for the employees? A. They do.

3171

Q. And is it in part supported by the employees through their contributions and in part by the company through its contribution. A. It is.

Q. And in the course of your regular work and course of duties with the company, did you have various assignments in connection with this welfare work? A. Yes, I did.

Q. I think you mentioned bowling as one of the chief of those activities in which you were engaged? A. That is right.

3172

Eleanor Misbach—For N.L.R.B.—Cross

S. M. 1240

Q. Well, did you in some way have charge of that?

A. Yes, I had charge of it, I was chairlady of it.

Q. You were the head? A. Of bowling.

Q. You were the head of the committee in the association that had to do with bowling? A. That's right.

Q. And was this welfare work regarded as paid for by the company as part of your regular duties? A. Yes it was.

3173

Q. But these welfare activities of the employees association did they have anything to do with the E.R.P.?

A. Yes, there was a committee of the E.R.P. that had a welfare committee.

Q. And you were chairman of that? A. No, I was on the board.

Q. You were on the board of the welfare? A. Yes.

Q. What does that committee do? A. Well, it took charge of medical cases and complaints and the likes of that, everything pertaining to the employees welfare.

Q. Well, was that— A. In other words I had charge of the hospitalization end of it.

3174

S. M. 1241

Q. Was that a committee that took up those matters with the management? A. Yes, that's right, general council referred it to us. We in turn contacted the employees.

Q. Now, was that welfare committee of which you are the head, was that a committee of the bureau or your department or of the company? A. The company at large.

Q. I mean, that was the collective bargaining agency, you may call it a matter of—well, it was a committee which dealt with management? A. That's right.

Eleanor Misbach—For N.L.R.B.—Cross

3175

Q. With respect to such matters of employee grievances as related to medical care, hospitalization and group insurance? A. That's right, pensions too.

Q. The whole welfare program of the company? A. Yes.

Q. And did the New York and Queens Electric Light and Power Company have a welfare program which included group insurance, pensions? A. Yes, I believe we did have one, yes, I know we had one, I have a copy of it.

Q. Also medical treatment? A. Yes.

3176

S. M. 1242

Q. And hospital care? A. Yes, I have that too.

Q. And the sanitarium at Green Lakes Farm? A. Yes, that's right, that is all in the one pamphlet.

Q. And with respect to all those welfare matters for employees you dealt with the management? A. That's right.

Q. And that was by reference of such matters to your committee or board from the general council elected by the employees? A. That's right.

Q. So that although you were not a member of the general council, you were chairman of the board or committee created by the general council of employees? A. I was not chairman but I was on a committee created.

3177

Q. On a committee, rather? A. Yes.

Q. You spoke of a Miss Helen Selden who had some duties of assigning or distributing work in your bureau, was that in the bureau as a whole or only in your department? A. Department.

Q. Your department? A. Yes.

Q. Do you know whether Miss Seldon was and is a member of the I.B.E.W.? A. No, I don't believe she is a member of the I.B.E.W.

Q. You spoke of another employee whose last name

3178

Eleanor Misbach—For N.L.R.B.—Cross

S. M. 1243

I did not get, his first name was Vincent? A. Latronica.

Q. Do you know whether he was and is a member of the L.B.E.W.? A. He is a member of the I.B.E.W.

Trial Examiner Gates: Did you say he is or is not?

The Witness: He is a member.

3179

Q. Do you fix the date more definitely of that meeting which you said was held at, I think, the meter repair shop, when the representatives of the E.R.P. of the Queens company were present? A. I believe the only way you could find it would be on my sheet there.

Q. What? A. You could find it, I believe, by looking up around April or so, when I had the time off in the morning.

Q. Do you know what day of the week it was? A. Monday morning.

Q. And referring to Board's exhibit— A. Yes, it must have been a Monday morning.

Q. Board's exhibit #17, can you fix the date of that? A. It was the 26th, right here, April 26th.

3180

Q. That is, you think— A. That is what I think it is.

Q. You fix the date as the 26th of April which you

S. M. 1244

stated would be a Monday morning? A. I believe so.

Q. And do you identify that meeting on Monday, the 26th, as this meeting at which were present the members of the various councils of New York and Queens Company? A. That's right.

Q. That would include not only those who had been elected to the general council but those who had been elected to department and bureau councils? A. Every one.

Q. That would be about how many elected representatives of the employees? A. About 96, I should say.

Q. 96? A. I think so, there were quite a few there.

Q. Now, I ask you whether it was after that date that you began circulating I.B.E.W. membership cards? A. It was after that date.

Q. You fix it as after the 26th? A. After we had the Long Island mass meeting.

Q. And was your action in circulating the cards the result of the discussion which took place at that meeting? A. (No response.)

3182

Judge Ransom: Strike that out.

Q. (By Judge Ransom) Was this subject of whether or not the employees who had been on the various E.R.P.

S. M. 1245

councils should go into the I.B.E.W., was that subject discussed at this meeting? A. Yes that was.

Q. And was it the next day or the same day that you made up your mind that you would circulate these I.B.E.W.— A. That morning, right then and there, I made up my mind.

3183

Q. After the discussion? A. After the meeting.

Q. At this meeting? A. Yes.

Q. You made up your mind you would do what you could to get members for the I.B.E.W.? A. That's right.

Q. Now, had you made application for membership in the I.B.E.W. before or after—before or after this meeting of the 26th? A. Not before, after.

Q. You made application then after the 26th? A. Yes.

Q. And you fix that as the date? A. After the meeting.

Q. And having yourself made application for mem-

3184

Eleanor Misbach—For N.L.R.B.—Redirect

bership, you took the cards to see if you could get others to join? A. That's right.

Q. Now, I notice in the columns of these other statements which were put in by Mr. Moscovitz from your

S. M. 1246

work records, various entries in which portions of indicated days are shown as having been devoted to matters which were described as medical company business, sometimes merely medical, and sometimes company business. What were those activities? A. Well, medical was, I had a treatment for my arm.

3185

Q. Those were personal matters of your own? A. Personal, sure, all medical meetings were personal.

Q. The instances when medical is shown or where "excused" is shown— A. I believe "excused" must be the bowling activities. I believe the word "excused" next to that must mean bowling. I don't know. I have never seen any of these sheets before.

Q. Would company activities or company business, under "miscellaneous"—do you know—down to the 26th of April, 1937, would that denote such time as you devoted to this welfare work or the E.R.P.? A. The E.R.P., that's right.

3186

Q. And you are sure that this medical is only personal? A. That's right.

Q. That's all.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) Miss Misbach, in response to a question put to you by Judge Ransom, you testified that after this particular meeting, mass meeting, you made up your mind that you would distribute I.B.E.W.

S. M. 1247

cards? A. Yes.

Q. Is that right? A. That's right.

Q. Now, after you made up your mind in that regard, whom did you advise? A. Whom did I advise?

Q. Yes. A. What do you mean.

Q. Did you tell anyone about having made up your mind? A. Why, I became a charter member of the I.B.E.W.

Q. Yes, and did you report to anyone in the company? A. To my chairman.

3188

Q. Yes, and did you report to anyone in the company that you had made up your mind to distribute cards?

A. I reported to my chairman and told him I had decided I would sign up.

Q. With the I.B.E.W.? A. With the I.B.E.W.

Q. But after you had made up your mind to distribute these cards, to whom did you report? A. To my chairman.

Q. And you told him that you had made up your mind to distribute these cards? A. Yes.

S. M. 1248

3189

Q. Did you report to anyone else? A. No, sir, to my chairman. He took care of everything.

Q. I see. Did he take care for you of the question of your getting paid by the company for the distribution of these cards? A. That was explained—

Judge Ransom: There is no testimony that she got paid for the distribution of cards. I am sure you didn't mean to ask that question.

Mr. Moscovitz: That is what I meant.

Trial Examiner Gates: The question may be put as to time.

3190

Eleanor Misbach—For N.L.R.B.—Redirect

Judge Ransom: There is no objection to the question whether she was paid for the time.

Q. (By Mr. Moscovitz) Did you get paid for that time? A. Yes.

Q. By the company? A. Yes.

Q. Who took care of the necessary arrangements for you to get paid? A. I don't know, I just got paid.

Q. Did the chairman take care of that? A. It was explained that the E.R.P. was still in existence and we were allowed to devote some time to the I.B.E.W.

3191

Q. Who explained that? A. My chairman, Pat Carey.

Ⓢ. M. 1249

Q. And Pat Cary was doing the same thing? A. I couldn't vouch for that. I know I was.

(Witness excused.)

Mr. Moscovitz: I would like at this time, Mr. Examiner, to offer a foreman's daily report and attached work order, the foreman's daily report being number—the work order number on the foreman's daily report, rather, being No. 2300R and attached there to being the work order on the particular work. I offer it at this time.

3192

Trial Examiner Gates: What is the purpose of the offer?

Mr. Moscovitz: Well, you will notice that the foreman's daily report of May 12, 1937 shows that A. Martini was engaged on that day in E.R.P. work for which he was paid, and it has been the testimony of Mr. Spalding, I think, that Mr. Martini on that day was engaged in distribution of the I.B.E.W. cards and the collection of dues.

Judge Ransom: No objection.

Trial Examiner Gates: There being no objection, it is admitted.

Harry N. Crowell—For N.L.R.B.—Direct

3193

(Document referred to marked Boards' exhibit #19 for identification, received in evidence, Witness Misbach.)

HARRY N. CROWELL, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

S. M. 1250

3194

Q. (By Mr. Moscovitz) Where do you live? A. 4317 Bowne Street, Flushing.

Q. By whom are you employed? A. Pardon me?

Q. By whom are you employed? A. Consolidated Edison.

Judge Ransom: Will you speak up a little, Mr. Crowell, I would love to hear this testimony.

The Witness: I work with the Consolidated Edison, 15th Street.

Q. (By Mr. Moscovitz) How long have you been with the Consolidated Edison at 15th Street? A. 7 years, in September.

3195

Q. Is that the entire length of service with the company? A. That is right, well, I haven't spent all that time at 15th Street, though. The last three or four years I have been there.

Q. I see. What kind of work do you do? A. Book-keeping.

Q. Who is your immediate supervisor or superior? A. Mr. McGinn.

Q. What is his first name? A. Al.

Q. Al? Yes.

3196

Harry N. Crowell—For N.L.R.B.—Direct

S. M. 1251

Q. What do you call him, what's his title? A. He is, I think, clerk in charge.

Q. Who is the person above him? A. Harry Lipps, he is the supervisor.

Q. Who is above him? A. R. J. Phillips.

Q. What's his title? A. He is the manager.

Q. And what is the name of the department you work in? A. Commercial relations.

3197

Q. Any particular division? A. Well, it used to be the cash posting division, I guess it still is that.

Q. Were you a member of the E.R.P.? A. Yes.

Q. Are you still? A. I still hold my card but they tell me it is gone.

Q. Who told you? A. Well, the general impression around the building is there is no more E.R.P. or "A".

Q. Are you a member of any other labor organization? A. Independent Gas and Electric Union.

Q. Independent Gas and Electric Union? A. And Electric Union.

Q. How long have you belonged to that organization?

3198

S. M. 1252

A. Well, since it started out about the 27th of April.

Q. 1937? A. That's right.

Q. Do you hold any office with it? A. I am a vice chairman of that.

Q. And before you became a member of that organization do you recall whether or not organizational work was going on in your department of the I.B.E.W.? A. Yes, it was, that was really one of the reasons why we started an independent union. You see, the employees, in general, the general opinion around there was that they did not want to be pushed into anything.

Judge Ransom: I move to strike out all the answer except "yes". It is purely argumentative and self-serving.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: Well, Mr. O'Brien and I started the independent Union for the simple reason that the general run of employees by a vast majority did not want to sign with the I.B.E.W. and they made no bones about it. Quite a few of them did sign for the simple reason they felt that was the safest thing to do, if not the best thing. 3200

Judge Ransom: I move to strike out the whole volunteered argument of the witness as not responsive to the question.

Trial Examiner Gates: It may be stricken.

S. M. 1253

Q. (By Mr. Moscovitz) When was it that you saw this I.B.E.W. activity to which you refer? A. That was shortly after, I think it was the 22nd of April that it really began.

Q. Where was it? A. Well, I worked on the 10th floor of the Irving Place office and I think the first activities started with some of the clerks in March. 3201

Q. Who was that? A. Well, a Mr. O'Callahan was really the ring leader of it.

Q. Is he a clerk in charge of the meter index division? A. That's right.

Q. Yes? A. And he got one of his men to give the speeches, Mr. Anello, James Anello.

Q. Well, who did he call into the meeting? A. Well, he started off with unit 1, 2 and 3, and they had them in there one day.

3202

Harry N. Crowell—For N.L.R.B.—Direct

Q. Are they girls or men? A. Well, they are both.

Q. Yes? A. Those particular units.

Q. Do all in one day? A. Oh, no, that went on for

S. M. 1254

several days, but that was really the beginning.

Q. Well, now, tell us about it. A. I guess they figured they would go right straight through to unit 27, but they did not get past three.

3203

Q. Well, tell us about the start of it and what took place. A. Well, Mr. O'Callahan apparently dropped all his regular duties there and spread the word around that Mr. Anello was giving these lectures in the meter readers' room, that's on the 10th floor—

Judge Ransom: I move to strike out the witness' argument about appearances, let him state what was said and what was done.

Trial Examiner Gates: The record will stand but I will ask that you do say what was said and what was done and not elaborate.

The Witness: Well, I can't state what was said.

3204

Q. (By Mr. Moscovitz) Well, tell me this, Mr. Crowell, Mr. O'Callahan is a clerk in charge, he has many,—how many employees working under him? A. Well, I think at the time he had around 140, meter readers.

Q. Now, all right. And do you know whether or not any of the employees under his supervision were called in to a meeting where they were asked to become members of the I.B.E.W.? A. Yes.

S. M. 1255

Q. Do you know when it was? A. I don't know the

date but it was in the vicinity of the 2nd of May, the meter readers were there.

Q. And is that the first evidence of that kind of activity that was brought to your attention? A. Oh, no.

Q. All right. Tell us then when it was first brought to your attention? A. When it was first brought to my attention was by the girls on the billing machine, they all disappeared and walked in, they were marched in there by their supervisor.

Q. Who was that? A. Miss Conklin.

Q. Yes. How many girls were there? A. I think there were 35 girls and they were in the meter readers' room for over an hour. 3206

Q. And who were the supervisors or superiors with them? A. Well, Mr. Conklin took them in and Mr. Anello made the speech.

Q. Who is Mr. Anello? A. Why, he is the meter reader.

Q. And was he a member of the E.R.P.? A. Yes.

Q. What job did he hold? A. I think he was one of the bureau councilmen. I think, I am not positive.

S. M. 1256

3207

Q. In an official capacity? A. Yes.

Q. Did he belong in your department? A. Yes.

Q. As an employee? A. In the department, yes.

Q. Yes, and this was done during working hours, wasn't it? A. Yes.

Q. Indicate yes or no, without shaking your head. A. All right, I am sorry.

Q. This was done during working hours? A. Yes, it was.

Q. Do you know what took place in this meeting? A. Well, I was not invited to come in to any of the meetings, I was in there alone once with Mr. Anello but the general idea was that you had better sign up now.

3208

Harry N. Crowell—For N.L.R.B.—Direct

Judge Ransom: I move to strike out the witness' conclusion and what the general idea was to something he did not attend.

Trial Examiner Gates: It may be stricken.

Q. (By Mr. Moscovitz) But did you have a talk with Mr. O'Callahan about the meetings he was conducting with Mr. Anello? A. No, I did not speak to Mr. O'Callahan about that.

S. M. 1257

3209

Q. Who did you speak to about it? A. Mr. Wisniewski.

Q. Who is he? A. I believe he is a supervisor, no, Walter Considine, he was the supervisor I spoke to.

Judge Ransom: What was the name?

The Witness: Considine, that is Walter.

Q. (By Mr. Moscovitz) Where is a supervisor—

Judge Ransom: Will you speak up. I hope there is nothing confidential about this testimony, I would like to hear it.

3210

The Witness: He is the supervisor on the 10th floor also.

Q. (By Mr. Moscovitz) Does he hold the same kind of a job that Mr. O'Callahan does? A. Yes.

Q. Go ahead. A. He is the supervisor in charge of the different units. Now, I don't recall—we were in the stages of shifting around from another old system to a new system. I don't know just what his location, title or anything is at the present stage.

Q. When did you speak with him? A. I spoke with him about the 2nd of May.

Q. All right. About these meetings? A. About allowing the men to go around the floor.

Harry N. Crowell—For N.L.R.B.—Direct

3211

S. M. 1258

Q. You were referring to Mr. Anello? A. No, I am referring to Mr. McGray.

Judge Ransom: What's that name?

The Witness: McGray.

Q. (By Mr. Moscovitz) Before we get to Mr. Considine and his reference to Mr. McGray, will you tell me, will you tell me whether or not you knew what happened when the girls were called into the meeting with Mr. Anello? A. Well, all I know is what they have told me.

3212

Q. All right, now, who told you? A. Different girls. If you want their names, I could furnish you with them later.

Q. Do you happen to know off hand, one of them? A. I do not want to be called.

Q. All right, then, you were referring to the girls in the department that were called in, the first time? A. That's right.

Q. And you say there were some 30 or 35 in number? A. That's right.

Q. Now, what did they report to you? A. Reported to me that they were given a pretty stiff talk, a good sales talk as to why they should join the I.B.E.W. and very few of them joined at that time and they were called in again, I think it was the next day, and they were given the same talk for at least an hour, and when they started asking questions, they were rather em-

3213

S. M. 1259

barrassing as to the virtues of the I.B.E.W., they were more or less beaten down, not answered in a straightforward way. The idea was to get them in there and Buffalo them into signing.

3214

Harry N. Crowell—For N.L.R.B.—Direct

Judge Ransom: I move to strike out the witness' argument as purely a characterization of something that is pure hearsay. I submit that no board of this character has a right to let such remote hearsay in, it is mere argument of a self-serving character, and it should not remain in the record.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

3215

Q. (By Mr. Moscovitz) Now, tell me this, Mr. Crowell?

Examiner Gates: I wish the witness would stick to the facts as reported to him, however, unless he knows those are the facts.

The Witness: Those are the facts.

Trial Examiner Gates: Stick to the conversation.

Q. (By Mr. Moscovitz) Now, just what—I will withdraw that. After these meetings that you were telling me about, did you have a conversation with this Mr. Considine that you have already referred to? A. Yes, I did.

3216

Q. Do you recall when that was? A. That was either May 2nd or May 3rd.

Q. And was it at that time that you spoke with him

S. M. 1260

about Mr. McGray? A. That's right.

Q. And who is Mr. McGray? A. He is just a clerk down there who is also, I think he was president of the bureau council under the E.R.A.

Q. And what was he doing, that you reported him about? A. Well, he was going around trying to sign the people up and collect money.

Q. For what? A. The I.B.E.W., and I have known Mr. McGray for some years, we have been more or less friends and I have asked him three different times to please stop or I would have to put a charge in and it was more or less a gentlemanly way of doing things and Mr. McGray point blank refused to do it, so I spoke to his supervisor, Mr. Considine, and he said it was none of my damned business and that he would run his place as he saw fit and permit Mr. McGray to do anything he felt like, so that was that.

Shortly after that I spoke to Mr. Considine's boss, 3218
Mr. Phillips and Mr. Phillips did stop it.

Q. When was it that it was stopped by Mr. Phillips?

A. That was around the 5th or 6th of the month.

Q. Of May? A. Yes.

S. M. 1261

Q. 1937? A. Yes.

Q. And during this period of time was Mr. Ganley around? A. Mr. Ganley was on the 12th floor, I bumped into him one day up there at lunch time with Mr. O'Brien, I think it is room 1237 and he was in there with several other people who I don't know.

Q. What is room 1237? A. I think that is the council room up there where they have the offices of the company union. 3219

Q. The E.R.A.? A. Yes.

Q. When was that that you bumped into him? A. That was a week—around the 5th.

Q. Of May? A. Yes.

Q. And what was Mr. Ganley doing? A. Well, he was directing orders around the company and he called up headquarters, I believe it was that, but the idea, he could not understand how we should get our petitions going on the Independent Union, he said they had gone

3220

Harry N. Crowell—For N.L.R.B.—Cross

all over the damned place but he didn't know how they got in but he was doing I.B.E.W. work.

Q. Was he working for the company or on leave of absence? A. I don't think he was on leave yet.

S. M. 1262

Q. Not on leave yet? A. Not that I know of.

Q. Do you know when he went on leave? A. No.

Q. He was awfully busy, though, wasn't he? A. Very, very busy.

3221

Q. And was that on I.B.E.W. work at that time?

A. Yes.

Mr. Moscovitz: That's all, Mr. Crowell.

CROSS EXAMINATION:

Q. (By Mr. Ransom) I am not sure that I got the names right in your answers to Mr. Moscovitz, you spoke of the bookkeeper by the name of McGinn? A. He is my boss.

Q. Yes. He is a clerk in the cash posting division? A. He is the clerk in charge.

3222

Q. The clerk in charge? A. Yes.

Q. Do you know whether he is a member of the I.B.E.W.? A. No, I don't.

Q. Now, Mr. Harry Bliss, do you know whether he is a member? A. Who?

Q. Bliss? A. You mean Lipps.

Q. Oh, Lipps? A. Yes.

S. M. 1263

Q. Do you know whether he is a member or not? A. I haven't any idea, I don't think he is eligible.

Q. But you don't know whether he is a member or not? A. No.

Q. Don't shake your head? A. I don't know.

Q. That is even more inaudible than your answers; Mr. O'Callahan, what's his work? A. He is the boss of the meter indexers.

Q. Well, what's his title? A. Well, I don't know whether it is clerk in charge or supervisor or what it is, one or the other.

Q. And is he a member of the I.B.E.W.? A. I haven't any idea.

Q. Mr. Anello, is that, that you spoke about? A. Yes, James Anello.

Q. He is a meter reader? A. That's right.

Q. Is he a member of the I.B.E.W.? A. Yes, he is.

Q. Mr. McGray, he is a member of the I.B.E.W.? A. Yes, he is.

Q. And do you know whether Mr. Considine is or not? A. I don't think he is eligible.

Q. Well, do you know whether he is a member or

S. M. 1264

not? A. No, I don't know.

Q. You spoke about a Miss somebody—I didn't get the name at all. A. Conklin.

Q. What? A. Conklin, I think it is.

Q. What's her position? A. She is a supervisor.

Q. Is she a member of the I.B.E.W.? A. No.

Q. What? A. Not that I know.

Q. But you don't know? A. No.

Q. You have testified concerning a meeting about May 2nd in the meter readers' room at which Mr. Anello made a sales talk for the I.B.E.W., what time of day was that? A. I think the first talk was about in the vicinity of 10.30 or eleven in the morning and the next day it was in the afternoon.

Q. At the time the meter readers were there, it wasn't

3226

Edward Shedlock—For N.J.R.B.—Direct

after they had finished their trips? A. Yes, they were back in the building, I don't know whether that is after hours or what, I don't know the hours of the meter readers.

S. M. 1265

Q. Well, wasn't it the fact that it was four o'clock after, after their day was over? A. If their day is over at four, it was after that, yes.

3227

Q. In any event, it was after four? A. That's right.

Mr. Ransom: That's all.

Mr. Moscovitz: That's all.

(Witness excused.)

Trial Examiner Gates: We will take a recess for five minutes.

(Whereupon a five minute recess was taken.)

AFTER RECESS

3228

EDWARD SHEDLOCK, was called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. Shedlock? A. 1422 116th Street, College Point, Long Island.

Q. By whom are you employed? A. The New York and Queens Electric Light and Power Company.

Q. How long have you been employed there? A. Since December 22, 1929.

Q. What work did you do? A. I do the work of a general tester, an assistant in the engineering department, test bureau, field test division.

S. M. 1266

Q. Are you a member of the Independent Gas Workers organization? A. Yes.

Q. Do you hold any official position? A. I am a member of the executive committee and of the organization committee.

Q. How long have you been a member? A. Since November 15, and member of the union since April 29th.

Q. Were you a member of the E.R.P. before? A. Yes.

Q. You were advised of the fact that Mr. Carlisle made an announcement on April 22nd, 1937, that he had recognized the I.B.E.W.? A. Yes.

3230

Q. Did you, after that notice, notice any organizational activity being carried on in your department for the I.B.E.W.? A. Yes.

Q. Do you recall what it was? A. It was within three days after the 20th of April.

Q. And by whom was it carried out? A. A particular party, Mr. Frank Riley.

Q. Who is he? A. He is a meter tester in the meter department of the same company.

3231

S. M. 1267

Q. Was he a member of the E.R.P.? A. Yes.

Q. And in what capacity? A. Yes.

Q. In what capacity? A. Departmental representative to the general council for what was formerly the meter and test department.

Q. What was he doing? A. He was distributing cards, I.B.E.W. obligation cards, to the various members.

Q. During working hours? A. Yes.

Q. Do you know whether or not he is now an officer

5232

Edward Shedlock—For N.L.R.B.—Direct

of the I.B.E.W.? A. He is not an officer. However, he is a member of the I.B.E.W.

Q. And anyone else? A. Mr. Willis.

Q. Who was Mr. Willis? A. He is from the sales office, the Jamaica office, of the New York and Queens Electric Light and Power Company.

Q. Where did you see him? A. I didn't see him. Mr. Bernard, who is in the same company, certified to that fact for me.

Q. Oh, he told you about it? A. Yes.

3233

S. M. 1268

Q. Well, was there anyone else that you saw? A. Mr. Stritzel, John Stritzel, of the service bureau of the Queens Company.

Q. When was it that you saw him? A. During the period I might say within the first week or ten days after the accorded recognition to the I.B.E.W.

Q. Where did you see him? A. At 4022 Lawrence Street, the central service building, Flushing.

Q. What was he doing? A. He was also distributing cards to the various members of the service bureau.

3234

Q. And do you know Mr. Riley? A. Yes.

Q. And what is his first name? A. Frank Riley.

Q. Was he distributing cards? A. Yes.

Q. Did you see him? A. Yes.

Q. Within the same time? A. He was the man I just told you about, the first man, Mr. Frank Riley.

Q. Do you know who the superintendent was there,

S. M. 1269

who is his superintendent? A. His superintendent is Mr. W. F. Kennedy.

Q. Was he a superintendent then? A. Yes.

Q. Do you know whether or not Mr. Riley was cir-

Edward Shedlock—For N.L.R.B.—Direct

3235

culating these cards at Mr. Kennedy's request? A. I do not know.

Judge Ransom: Objected to—never mind, he said no.

Q. All right. A. I recall a statement made to me by Mr. Riley. I was particularly interested in this case because he wanted to become a member of the Independent Gas and Electric Union.

Judge Ransom: I move to strike out the witness' volunteered statement as to his interest or lack of interest. 3236

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

A. When I questioned Mr. Riley as to why he was again distributing cards, he made this statement to me, that he and Mr. P. J. Carey, Mr. P. J. Carey, was formerly general councilman of the Queens E.R.P.—

Mr. Moscovitz: What is he now?

The Witness: He is now, as far as I know, the temporary international representative of local 829, the I.B.E.W. union in Queens. He told me that at a meeting when he asked for the co-operation of the members of the general council to solicit membership in the I.B.E.W. that he 3237

S. M. 1270

was accused in the past of not cooperating with Mr. Carey very successfully. He said that at that meeting he told Mr. Carey he didn't want to have anything to do with the I.B.E.W.

Q. Who told Mr. Carey? A. Mr. Riley did. It resulted in a sort of slightly personal disagreement be-

3238

Edward Shedlock—For N.L.R.B.—Direct

tween the two men and Mr. Riley ceased I.B.E.W. activities. However, Mr. Riley made the statement to me also—

Q. When was that statement made? A. About the 11th, the 10th or 11th of May.

Q. Yes. A. He stated that the reason he was back again doing I.B.E.W. work was because he knows definitely that Mr. Carey spoke to Mr. L. A. Coleman concerning him.

Q. Mr. L. A. Coleman? A. Mr. L. A. Coleman.

3239

Q. Who is he? A. Executive vice president of the New York and Queens—

Judge Ransom: I object to that as purely hearsay, three or four degrees removed and not admissible here under any rules of evidence.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

The Witness: So Mr. Coleman in turn talked to Mr. Kennedy as superintendent and the result

S. M. 1271

3240

of it was that Reilley was back soliciting membership and collecting dues in the I.B.E.W.

Q. (By Mr. Moscovitz) You saw him doing that, did you see any collection of dues at any time? A. No money was transferred.

Q. Did you see any notices on any bulletins, any bulletin boards, regarding the collection of dues? A. Yes, sir, I saw a notice on the bulletin board in the service bureau, Chateau Room, 4022 Lawrence Street.

Q. What did it have to say? A. Do you want it word for word?

Q. Did you copy it down? A. Yes.

Q. What was the date you saw it? A. I have it recorded as May 12th, that appeared on the blackboard of the premises of the New York and Queens Electric Light and Power Company, 4022 Lawrence Street.

Q. Written down? A. Written down in crayon on the blackboard, yes, sir, it is a blackboard that is used, the Chateau Room is used as a locker room from the men in the service bureau when they are out on duty for the company. They wear a uniform and they use that room as a locker room, it is referred to as the Chateau Room, and on this blackboard they use it for probably posting, important announcements of one sort or an-

3242

S. M. 1272

other as to various activities.

Q. How long have you known this blackboard? A. Well, it has been there, I could not give the exact time it has been there. I noticed the same announcement as early as May 5.

Q. Well, what kind of an announcement had appeared on the blackboard during your employment in the company, as you have seen the blackboard from time to time? A. Well, such things pertaining to possibly an activity of soft ball or basket ball or hand ball, any activity of a general nature.

3243

Q. Can any employee take a piece of crayon and write on the blackboard whatever he wants? A. They

S. M. 1273

could, but it wasn't the usual procedure.

Q. What was the usual procedure? A. The usual procedure was a representative of a particular association, for instance, if it was the manager of some ball team, why he could go over there and write up a notice that there would be a base ball game, or anything and

3244

Edward Shedlock—For N.L.R.B.—Direct

sign his name to it. They were usually signed. Whoever put them up there would sign their name to it.

Q. Yes, and was this notice signed? A. Yes.

Q. By whom? A. Mr. J. Stritzel.

Q. Is he the person to whom you have already referred? A. Yes.

Q. What is his title? A. I don't know his company classification. All I know is that he is in the service bureau. He is one of the employees, I don't think he is in a supervisory capacity.

3245

Q. What was it that you saw on the bulletin board, a reference to the time when dues would be collected? A. Yes, it stated that all members who did not pay their admission fee and local 839 dues, \$1.15, by May 15th, 1937, will not be eligible for vote in the general election of officers, and so forth, January, 1937.

S. M. 1274

Q. When was it that you saw the collection of dues? A. I did not see the actual collection of dues, the money transferred.

3246

Q. What did you see? A. Various employees asking information about the independent unions stated that they had paid dues to both Mr. Reilly and Mr. Stritzel.

Q. Well, did you ever speak with any one in a supervisory capacity regarding the recognition of the I.B.E.W. by the company? A. Not directly.

Q. When you say not directly, what do you mean? A. I refer to the morning following the announcement that Mr. Carlisle had recognized the I.B.E.W., Mr. Coster who was in the laboratory at the Queens Company, we were told to go up to the laboratory to a meeting, that was about, shortly after 8:30 in the morning, May, he read to us the article that had appeared in the newspapers. I don't know which newspaper it was, whether it was a

Edward Shedlock—For N.L.R.B.—Cross

3247

lengthy item about the recognition accorded to the I.B.E.W.

Q. Were you there when he read it? A. Yes, sir.

Q. And what did he say about it?

Mr. Ransom: I object to that as in no way binding upon the respondents or included in any issues here.

S.M. 1275

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

3248

The Witness: Mr. Coster himself did not say anything directly since I was still considered as a representative on the employees representation plan, having received no official word that it had been disbanded. I asked the question as to whether or not the company was violating the Wagner Act under that particular assignment of recognizing a union without giving the employees a chance to vote as to their unit for collective bargaining. Mr. Coster did not care to make any statement on that, he merely read the newspaper article and that was all there was to it. He did not care to volunteer any information whatsoever. We were allowed to draw our own conclusions from that newspaper article.

3249

Q. What was his title? A. He was the foreman of a laboratory under the consolidation changes, I don't know where, whether his title had been changed.

Mr. Moscovitz: That's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) What is the work of this test bureau? A. The test bureau takes care of all vari-

3250

Edward Shedlock—For N.L.R.B.—Cross

ous types of testing both company equipment and consumers' equipment, motor road tests, indicating voltage.

S. M. 1276

load, readings, all kinds of investigation of high bills, radio complaints and so on.

Q. Well, you made those tests on either consumers' premises or company premises? A. That's right, yes, sir.

3251

Q. Then your testing is of equipment which is in service? A. That's right, equipment in service or equipment about to be put into service.

Q. Referring to Riley, whom you spoke of as the meter tester who had distributed I.B.E.W. cards, do you know whether he is a member of the I.B.E.W.? A. He is a member, to my knowledge.

Q. So far as the activities of Mr. Willis, who is in the sales office of the company in Jamaica, as to that you know only what Mr. Bernard told you? A. That's right, yes, sir.

Q. Do you know whether Mr. Willis was or is a member of the I.B.E.W.? A. I don't know.

3252

Q. But you have no knowledge of it in a personal way at all? A. No, sir.

Q. Mr. Stritzel, what is his position in the service bureau? A. I don't know his official classification in the service bureau, I don't know whether he is classified as

S. M. 1277

a lineman or not, the work of the service bureau is various classes, I don't know whether he goes out on what they call "nolight complaints," or whether he goes out on line troubles or just what his particular nature of work might be, however, I don't believe it is in a supervisory capacity.

S. M. 1278

Q. Do you know whether he is a member of the I.B.E.W.? A. He is a member of the I.B.E.W.

Q. Do you know whether he is one of the temporary officers pending the election? A. No, sir, they had a nomination yesterday.

Q. You don't know whether up to this time he has been a temporary officer or not? A. No, sir.

Q. And Mr. Coster? A. Mr. Coster?

Q. Do you know whether or not he is a member? A. He, I understand, is not eligible for membership.

3254

Q. This blackboard that you spoke of in the chateau room,—that isn't under any glass cover, or is that in any way locked, is it? A. No, sir, it is exposed.

Q. Did you identify this notice on the blackboard in some way that Mr. Tritzel had placed on there? A. Yes.

Q. Was it signed by him, or by his name? A. Signed by Mr. Tritzel.

Q. This conference at which Mr. Coster read the article to several of you in the laboratory, you say was held somewhere between 8:30 and 9? A. Yes, if I remem-

S. M. 1279

3255

ber, that was the time. We report for duty at 8:30 and it was shortly after that that we were told go to upstairs.

Q. What has been your relation to the E.R.P.? A. I was representative of the test bureau.

Q. In the department council? A. At that time it was the meter and test department. I was merely a representative of the test bureau of that combined department.

Q. In the department council or the general council? A. No council at all, just a representative from the bureau. Mr. Riley was the chairman of that particular council, department council.

3256

Philemon Ewing—For N.L.R.B.—Direct

Q. Well, did that give you membership in the department council? A. We could meet with the chairman, but on the department council. The departmental council really was us fellows automatically,—Mr. Riley was the chairman.

Judge Ransom: That's all.

EXAMINATION BY THE TRIAL EXAMINER:

3257 Q. (By Trial Examiner Gates) Did Mr. Riley tell you that Mr. Kennedy spoke to him or not? A. Yes.

Q. Did he say what Mr. Kennedy said to him? A. No, sir.

Trial Examiner Gates: That's all.

(Witness excused.)

S. M. 1280

3258

PHILEMON EWING, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 208 East 32nd St.

Q. New York City? A. Right.

Q. Were you formerly employed by the Consolidated Edison Company? A. That's right. It was the Consolidated Gas Company then.

Q. When were you last employed by that company? A. January 17, 1936, last year.

Q. Immediately before the merger with the Consolidated Edison? A. Well, I don't know whether that was

Philemon Ewing—For N.L.R.B.—Direct

3259

immediately before or not. I couldn't say off-hand. It was January of last year.

Q. Of 1936? A. That's right.

Q. At the time you were last employed, what department were you working in? A. Mechanical department.

Q. Were you a member of any labor organization?

A. Yes, I was a member of the Brotherhood of Utility

S. M. 1281

Employees at the time I was fired. I was secretary of the Equity Local at that time, that was the Manhattan Local, and I was also a member of the company union.

3260

Q. That is the E.R.P.? A. The E.R.P.

Q. How long did you work for the company? A. About five, not quite five and a half years. The day after election day in 1930, that is the beginning of November, 1930, I started.

Q. What kind of work had you done when you first went to work? A. Testing gas and analyzing.

Q. What did you get? A. Well, I started at 20.

Q. How long did you work at 20? A. Until the following June, then they raised me to \$22.50.

Q. Same kind of work? A. Same kind of work.

3261

Judge Ransom: I object to this unless its object is stated. I don't see that it is in any issue here. There is no charge and there is no complaint which relates to Mr. Ewing. We have had numerous amendments to the complaint, and no amendment as to Mr. Ewing.

Trial Examiner Gates: Well, he is entitled to testify the same way as the other witnesses.

S. M. 1282

Judge Ransom: Well, I object to this line of testimony as wholly immaterial to any issue in the case.

3262

Philemon Ewing—For N.L.R.B.—Direct

Trial Examiner Gates: The reporter may read the question.

(Question read.)

Trial Examiner Gates: He may testify.

Q. (By Mr. Moscovitz) Did you secure a raise thereafter? A. Yes. Let's see—what year was it—1934, I got a five-dollar raise.

3263

Q. Which brought your salary up to what? A. That brought my salary rating up to \$27.50, I guess what you call, but there was a cut off that.

Q. Was that the same kind of work? A. The same kind of work.

Q. Did you get a cut after your increase? A. No, there had been a general cut of 8 per cent and then half of that had been restored.

Q. Did you get a raise after that again? A. No.

Q. When you were last employed, was that the amount of money you were making? A. \$27.50 minus 4-1/6 general—

3264

Q. Did you get any part of that general cut back? A. Yes, the company restored—I don't remember just when—half of it—it must have been some time in 1934,

S. M. 1283

in the Spring of 1934, they restored half of the 8-1/3 per cent original cut.

Q. And what was the date of your last employment with the company? A. January 17, 1936.

Q. Now, at the time, were you doing the same kind of work you were doing when first employed? A. That's right.

Q. Had there been any additional responsibilities or additional work? A. Well, for a period there had been.

Q. What period? A. That was the period starting February 14, 1935, the work—

Q. Ending when? A. I couldn't say. The last time it lasted for a couple of weeks and it stopped there. I made numerous complaints that they were working me all of a sudden too hard and I kept a time record of how long it took me to do things, and pretty soon they stopped it after a week or two.

Q. When did that start? A. February 14th, that is the best of my recollection. The reason I remember it is because—

Q. 1935? A. Yes, 1935.

S. M. 1284

Q. What was this added work you were doing? A. Well, I had been doing morning and afternoon tests at a station in Long Island City, and one in Flushing, and then they all of a sudden added on the afternoon tests at the 79th St. station as well, and expected me to get that all done in a normal day, which, of course, I wasn't able to do.

Q. You protested that and it was changed? A. Yes, after awhile, though.

Q. After what period of time, for two weeks? A. I couldn't say off-hand, approximately two weeks, I would say.

Q. And did you, during the period of time through which you were employed, have any special work to do in addition to your regular work? A. Well, there was—for some time when I was stationed at Long Island, at Elizabeth St. station, there was a little extra work that went to that station.

Q. How many men in your department doing the same kind of work that you were doing? A. Doing the same kind of work as me?

3268

Philemon Ewing—For N.L.R.B.—Direct

Q. Yes. A. I couldn't say off-hand, approximately eight, but some of them had a little more complicated work than I did.

Q. Just exactly what was the work you were doing?
A. Well, I tested gas for heating value, analyzed the gas,

S. M. 1285

made gravity tests and things like that, and tested and analyzed for sulphur and ammonia content, things of that sort.

3269

Q. These other men that you said worked in your same department, had they been employed for a longer period of time than you?

Judge Ransom: Objected to as immaterial, not within any issue of the case here.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

A. Some, yes, and some no.

Q. Well, which ones had been employed for a shorter period of time? A. The names, you mean?

3270

Q. If you can give them. A. Well, there was one named William Traskis, but he had been transferred out of that up to Hunt's Point.

Q. When? A. Perhaps 1934.

Q. O' before you were last employed? A. Yes.

Q. The time you were last employed, how many men were working in your department, you have testified eight, is that right? A. Well, I did not count as the de-

S. M. 1286

partment, there was a group of men under Will Mekoskey, that was my immediate boss, there was approximately, there were eight.

Q. Eight? A. Yes.

Q. Now, of that eight, were there any who had been working for a lesser period of time than you were with the company, if you know? A. I can't think of any off-hand, I don't believe so.

Q. Do you know what their seniority was? A. Most of them by several years and one of them by a couple of months.

Q. You mean in terms of longer service than you? A. Than me, yes.

Q. All right, and during the period of time that you were employed with these other men, had you been disciplined by your foreman or supervisor?

3272

Judge Ransom: I object to that as irrelevant, incompetent and immaterial.

Trial Examiner Gates: He may answer.

The Witness: Discipline?

Q. (By Mr. Moscovitz) For improper work? A. Not that I can remember.

Q. Had you been commended by him for the work which you had been doing? A. Well, that was the basis

S. M. 1287

3273

upon which my last five-dollar raise was given, also my previous \$2.50 raise.

Q. Well, tell us about that. A. Well, the last one, it was shortly after the E.R.P. had been started, our representative was supposed to take up the question of a general increase, because the men in the department, about half of them were very much dissatisfied with the pay that they were getting and it was supposed to be on a basis of a blanket increase, referring to the kind of work they were doing, but it was actually put through as individual raises and the men that were doing the same work as I was at the time, that it was either the

3274

Philemon Ewing—For N.L.R.B.—Direct

end of June, the end of June, I believe, 1934, they were getting the same pay, most of them \$20, \$22.50, with the cut, and then, within the course of a couple of weeks every one of them except me got five-dollars a week raise and everybody except me, and so I was going to go down, I asked my company union representative named Bishko what the reason was and he said, "Well, Mr. Lunn," that is our chief chemist, "said that he had raised every one except one and his work was not satisfactory."

3275

So I was going to go down to see my immediate supervisor, Mr. Mekoskey, as to if it was true that my work was not satisfactory, and if so why he had not told me so. But it so happened he came up the very day that I had intended to go down to see him. I was working in

S. M. 1288

the Bronx at the time and he came up to see me. He generally visited the stations occasionally, but this time he did practically nothing in the station, hardly even looked around and it seemed to me obvious that he had come up to visit me.

3276

He spent several hours there, from approximately eleven o'clock until one, and he immediately—and he hemmed and hawed and beat around the bush, so obviously, it took two hours to get out what he wanted to say.

Judge Ransom: I move to strike out the statements—

The Witness: I asked him—

Judge Ransom: Just a moment.

The Witness: Excuse me.

Judge Ransom: I move to strike that out as purely argumentative and self-serving and calling for a conclusion.

Philemon Ewing—For N.L.R.B.—Direct

3277

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

I move to strike out the entire answer, on the ground that there has been no charge, no complaint, no contention made in this case under the complaint with respect to this witness. The matter is not within any issue here, the company has not received any notice of hearing with respect to the claimed discharge of this witness.

Trial Examiner Gates: He may continue, overruled.

3278

Judge Ransom: Exception.

S. M. 1289

Trial Examiner Gates: The motion to strike is denied.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Now, you were just getting to the subject of— A. Well, I asked him, "Isn't my work satisfactory?" I told him what they had said, or what he had said and he said, "Oh, yes, the work is all right, the work's all right," and I said, "Well, then, why didn't I get a raise like the rest of them?" Well, then, it came around and around and he said in effect, he said, the impression had been created, or they definitely had the opinion, that I was the official agitator in the department or something like that.

3279

Q. Agitator about what? A. About salaries and hours and things like that, and I said, "Isn't that the reason why I didn't get a raise?" And he said, "Oh, no, oh, no," and then he said that engineers and technical men were professional men and they should not have unions, they should be individualists. I mean, they should develop individual initiative and take pride in their profession and they should not get together like

3280

Phileman Ewing—For N.L.R.B.—Direct

laborers and it is bad stuff, this union, although he did not exactly say "bad stuff, this union," but very definitely said that technical men should not have recourse to such methods, they should rely on individual initiative

S. M. 1290

and each one try to do his best and for himself and not worry about the other fellow and then in addition to that—

3281 Q. Just a moment, did you fix the time? A. The time?

Q. Yes. A. You mean the day?

Q. Yes. A. That was July 6th or 7th, I am pretty sure, I might have notes at home on that.

Q. What year? A. 1935.

Q. 1935? A. Yes, no, no, wait a minute, 1934, excuse me, 1934.

Q. Now, at that time were you a member of any organization other than the E.R.P.? A. Oh, yes, Brotherhood of Utility Employees at that time, the same one as is now the C.I.O.

3282 Q. And when you had joined it— A. I joined it in October, 1933.

Q. Yes, at the time he spoke with you about the union, were you an officer of the union? A. No, but I was already, let me see, I take that back, I was not an officer of the union.

Q. Were you a member of any committee? A. At that time?

S. M. 1291

Q. Yes. A. No.

Q. Were you active in your union work? A. Yes.

Q. Had you been circulating papers? A. Yes, I was a member of another union, too, the Federation of Archi-

Philemon Ewing—For N.L.R.B.—Direct

3283

fects, Engineers, Chemists and Technicians, because the chemists did not care so much originally for the general industrial union there, the Brotherhood, so we thought, Losee and myself—

Q. But that was not a very active organization, was it? A. Yes, that was the one that had been connected with the activity at the particular time when the raises started coming through all of a sudden.

Q. I see, was that the one that was conducting the activities at the time this man spoke with you about the union? A. That and the Brotherhood.

3284

Q. Both of them? A. Yes, both of them.

Q. And you were active in both at that time? A. That's right.

Q. What was your—what kind of activity were you engaged in? A. Well, going around visiting the members and trying to get them to join and pointing out the benefits of unionism and circulating.

Q. Which of the two unions were you attempting to get them into? A. Well, both, if possible, that is a fact.

Q. Well, now, explain that. A. Well, of course I originally—

S. M. 1292

3285

Judge Ransom: I object to that as wholly irrelevant, not within the issues here.

Trial Examiner Gates: Objection overruled, continue.

Judge Ransom: Exception.

Trial Examiner Gates: Don't answer when there is an objection.

The Witness: All right, I originally tried the Brotherhood because I figured it was better in an—I figured it was the best in an industrial union, but they did not seem to respond very much origi-

3286

Philemon Ewing—For N.L.R.B.—Direct

nally to the Brotherhood, so I figured this Federation of Architects, Engineers, Chemists and Technicians, that might interest them more, it had more professionally sound to it, so I managed to get a bunch of them to join that, Losee and myself managed to get a bunch of them to join that and then afterwards they thought it would be better if they tied in with the whole bunch of the employees in the company, that is the Brotherhood.

S. M. 1293

3287

Q. So they all went into the Brotherhood of Utility Employees? A. Yes.

Q. When was that? A. That was around April, that is right around April of 1934.

Q. All right, now, then, this man that was speaking with you about your union activities, have you given us his title? A. His title?

Q. Yes. A. I believe it is chemist.

Q. Chemist? A. Yes.

Q. Is he a chief chemist? A. No.

Q. Does he have any supervisory— A. Yes, he had supervision over these, perhaps, eight men I have referred to.

3288

Q. You being one of them? A. That's right.

Q. What else did he say to you? A. Well, if I might make a short explanation.

Q. All right. A. We had to do sometimes Sunday work and night work testing, that would mean that one man would go around on a Sunday, spend a whole day testing all over the city, or sometimes at night, starting at eight o'clock and maybe ending at five o'clock in the

S. M. 1294

morning going all around, and it so happened that it took all the men approximately the same length of time to do

it, so when they did it, except I believe one man, or it was the contention that one man could always do it much quicker than the others. Now, he intimated to me that I was one of those responsible for allegedly keeping the time up, because you got paid, originally got paid overtime for that and afterwards we got time off for that, and he intimated that I was one of those responsible for preventing the men from speeding up on that work.

Q. I see, are you finished? A. No, then he said, "Well, now, if you will cooperate I will see what I can do for you." So I consulted union men, I did not promise one way or the other, I did not say anything, and I consulted union men when I wanted, I said the best thing would be to bring it up in the E.R.P. and make a scandal of it, of him trying to buy me out, but he said that was not the best course, just lay low and then approximately six weeks time, maybe it was seven weeks, I got the five dollars raise and I got it at a time ordinary raises, according to my understanding, are not given without the approval of the chief chemist.

3290

Now, my raise was dependent upon my work over this period of six or seven weeks and was supposedly dependent on what kind of work I did, which would in-

3291

S. M. 1295

clude, of course, the last few weeks of that period during which time the chief chemist, Lunn, was out of town on vacation, I believe, and yet ordinarily he would be supposed to approve the raise as I understand it, but the raise came through, I think it was the first of September, Mr. Tompkins, the assistant chief chemist, called me and said I had been doing very good work and they noticed it and they were going to give me a five dollar raise.

Q. What year was that? A. 1934, the same year.

3292

Philemon Ewing—For N.L.R.B.—Direct

Q. Now, at any time after that, did you receive any particular commendation from any of your supervisors?

A. No, because I immediately started in again that activity.

3293

Q. What kind of activity? A. Well, the company, excuse me, I mean the E.R.P., our department was practically the only one that ever had any general membership meetings and the general council of the E.R.P. had reversed itself four times on the overtime question, so at the next meeting, either the next meeting or the meeting after, within a couple of months or a month after, I got my raise, we brought this question up in connection with our delegates report on the matter and it was voted by the employees of the chemical department to find out why

S. M. 1296

3294

the general council reversed itself so many times on the overtime question and I was elected chairman of the investigating committee and Losee was elected secretary. So we proceeded to investigate, that was on a Friday, that was November 16th, we did some other union activity in the meanwhile, but on November 16th, on the following Monday, they already had a petition around which the bulk of the employees had signed calling for another meeting.

This had been done in an undemocratic way or something like that, it said, and we must have another meeting and we kept on investigating and they had another meeting on January 4th.

Q. January 4th of what year? A. The next year, that is 1935, to vote us out of office, so Losee and I prepared a three-page report which we read to them on the company union, I mean the E.R.P., and then we took a vote and by one vote it was voted to continue, not to vote us out, so we continued, we wrote a letter to Vice-president Stillwell—

Philemon Ewing—For N.L.R.B.—Direct

3295

Judge Ransom: I object to this line of testimony. I ask for what purpose it is offered, it is taking up a great deal of time, but it is not within the issue here.

Trial Examiner Gates: Will you answer that question, please, Mr. Moscovitz?

Judge Ransom: For what purpose is this mon-

S. M. 1297

ologue being given?

Mr. Moscovitz: Well, the testimony itself is in support of Mr. Losée's testimony and it will also establish certain acts of discrimination by the company so far as this particular witness is concerned.

3296

I hope after he completes his testimony—

Judge Ransom: Then upon that statement I object to it and move to strike out the testimony of the witness, there is no claim in either the charge or the complaint of any discrimination with respect to this witness. We have been brought here to try to define the issues, we have had no hearing or any notice of any other hearing. If the claim of discrimination against this witness is claimed, we have had no opportunity of it or notice to prepare for it. I had no idea whatever until this witness was called to the stand that he would be a witness, or that any claim was made that he was included within the issues in this case.

3297

Trial Examiner Gates: Do you want to allege violation of 8-3 in respect to this witness?

Mr. Moscovitz: There is no allegation in the complaint at this time, Mr. Examiner, regarding the discharge of this witness.

Trial Examiner Gates: Continue.

3298

Philemon Ewing—For N.L.R.B.—Direct

Judge Ransom: Exception.

Trial Examiner Gates: The motion to strike is denied.

S. M. 1298

The Witness: So the committee wrote a letter, they wrote several letters, one was to Vice-president Stillwell, who was in charge of employee relations of the Consolidated Gas and we asked him what was the cost of the E.R.P., approximately, and to what account it was being charged? I mean, who was paying for it and we asked in particular who it was that wrote this, the constitution of the E.R.P.? It was a little yellow book and we never received an answer from him.

3299

Q. When did you write? A. That was in January of 1935.

Q. Did both you and Solosy sign your names to it? A. I am not sure as to that. I know Solosy signed his name because he was secretary. I don't know whether he signed or not, but our names were on a printed letterhead.

3300

Q. Tell us more of your investigation activities. A. We sort of subpoenaed the leading representatives of the E.R.P., the general council, and we had our delegate get a room in the Gas Company building for a certain evening after work, and we wrote them letters and told them to come there, that we were going to investigate them, and they immediately called a special meeting of the general council on company time, of course, to consider what to do with these invitations.

S. M. 1299

Q. When was that? A. That was also in January of 1935, and they decided instead of coming to our meeting,

Philemon Ewing—For N.L.R.B.—Direct

3301

that they would invite us, they would have another special meeting of the general council and invite us to that. I believe that was January 23rd we held it, so we got time off from work and we spent the afternoon there asking questions about the plan.

Q. How long did this investigation of yours continue? A. From November 16th to February 7th.

Q. I see. 1936? A. 1935.

Q. Then after you had completed your investigation—

Judge Ransom: You mean November, 1934 to February, 1935? 3302

The Witness: That's right.

Judge Ransom: November, 1934 it started?

The Witness: That's right.

Judge Ransom: Finished February, did you say?

The Witness: 1935, yes.

Q. (By Mr. Moscovitz) When you finished, you submitted your report, is that right? A. That's right.

Q. After you submitted this report, did you spend your time in activities in support of the Brotherhood of Utility Employees? A. Oh, yes. 3303

S. M. 1300

Q. And was your time then exclusively, outside of your working hours, spent in that work? A. Practically, yes.

Q. And you did not then continue after that period of time with the Architects Union, is that right? A. That's right.

Q. At this point, after February 7, 1935, were you a member and officer of the Brotherhood of Utility Employees? A. Not at that time. I was elected in September, beginning of September.

3304

Philemon Ewing—For N.L.R.B.—Direct

Q. September, 1935? A. That's right.

Q. All right. What office? A. Secretary of Equity Local No. 100. That had charge of Manhattan.

Q. And between February 7, 1935 and September, 1935, when you became an officer, were you still active in your work? A. Oh, yes. Solosy and I were editors of a little union paper, the "Gas Man." We had our names on it.

Q. And you distributed it? A. Yes, we did.

3305 Q. Where did you distribute it? A. At the various offices and shops.

Q. At the exits where people left work and went to work? A. That's right.

S. M. 1301

Mr. Moscovitz: I think, Mr. Examiner, this would probably be a good time to stop this examination because I will have a chance now to talk to Judge Ransom. We could get the remaining witnesses here tomorrow and we probably would be in a position to close tomorrow.

3306 Judge Ransom: There is some data that Mr. Moscovitz want that if we are going to have for him, I will have to be able to get in touch with the men before five o'clock.

Trial Examiner Gates: Will that take up all the time between now and five? We could suspend temporarily and finish with this witness.

Judge Ransom: No, we would have to get to them.

Trial Examiner Gates: All right, we will recess until ten o'clock tomorrow morning.

(Whereupon, at 4:30 o'clock p. m., the hearing was adjourned to June 24, 1937, at 10 o'clock A. M.)

S. M. 1302

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

IN THE MATTER
of

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., and its affiliated companies,
BROOKLYN EDISON COMPANY, INC.,
NEW YORK & QUEENS ELECTRIC LIGHT
& POWER COMPANY,
WESTCHESTER LIGHTING COMPANY,
THE YONKERS ELECTRIC LIGHT AND
POWER COMPANY,
NEW YORK STEAM CORPORATION,
CONSOLIDATED TELEGRAPH & ELEC-
TRICAL SUBWAY COMPANY,

Respondents,

and

UNITED ELECTRICAL AND RADIO WORKERS
OF AMERICA, Affiliated with the Commit-
tee for Industrial Organization.

3308

Case No.
II-C 224

3309

14 Vesey Street,
New York City, N. Y.,
June 24, 1937.

The above-entitled matter came on for hearing pur-
suant to adjournment taken June 23, 1937, at 10:00
o'clock A. M.

Before:

ROBERT M. GATES, Trial Examiner.

3310

Philemon Ewing—For N.L.R.B.—Direct

Appearances:

DAVID A. MOSCOVITZ, Esq., attorney for the National Labor Relations Board.

S. M. 1303

WILL MASLOW, Esq., Attorney for the National Labor Relations Board.

3311

LOUIS B. BOUDIN and SIDNEY ELLIOTT COHN, 8 West 40th Street, New York, New York, appearing for United Electrical and Radio Workers Local 1212.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City, New York (By William L. Ransom, Jacob H. Goetz, and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

S. M. 1304

3312

Trial Examiner Gates: Proceed.

Mr. Moscovitz: I will recall Mr. Ewing.

PHILEMON EWING, was recalled as a witness for the National Labor Relations Board, being first duly sworn, testified further as follows:

Direct Examination (Continued):

Q. (By Mr. Moscovitz) What was the date of your discharge; you said? A. January 17, 1936.

Q. Well, after you became an officer of the union you testified that you continued being active? A. That is right.

Q. You testified that your activity was of the kind which resulted in distribution of circulars and the securing of membership and so on? A. That's right.

Q. You worked in that regard hand in hand with Selassie, is that right? A. That's right.

Q. And that was true up to the time of your discharge? A. That's right.

Q. And did any of your bosses or supervisors talk with you during that period of time?

Judge Ransom: Just a moment, I object to the question and to this whole line of inquiry. There

S. M. 1305

is no issue tendered here by the complaint or by the charge with respect to discharge of this employee or with respect to any discriminatory treatment of this former employee.

There has been no notice of hearing with respect to a claimed discharge of this employee for any reason claimed to be within the jurisdiction of this Board. The company has in no way been apprised until late yesterday afternoon that any claim was made in behalf of the Regional Director or the Board as to this former employee in any respect whatsoever in, behalf of the respondent Con-Edison Company.

We claim surprise and complete lack of the preliminary procedure necessary to apprise us of such an issue and bring it before this Board for trial.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Will you please repeat the question?

3316

Philemon Ewing—For N.L.R.B.—Direct

(Reporter repeated the pending question as follows:

“Q. And did any of your bosses or supervisors talk with you during that period of time?”)

A. Are you referring to the period after I got elected an officer?

Q. (By Mr. Moscovitz) That's right. A. Wait a minute—I can't recall offhand.

Q. All right. A. What I testified was prior to that

3317

S. M. 1306

but I was already openly a union man as one of the editors of that paper.

Q. And did you know whether or not you were being watched by any undercover man during that period?

Judge Ransom: Objected to as incompetent, wholly outside any issue here, no claim made in the complaint with respect to this employee, outside any issue here.

Trial Examiner Gates: He may answer.

Judge Ransom: Exception.

The Witness: Well, yes, but particularly in the early period prior to my \$5.00 raise. I had a feeling that I was—

3318

Q. (By Mr. Moscovitz) Well, did you know? A. Yes, because I started following them around, and in one case I went up and followed a man around several blocks and all around and I finally went around and walked up to him and apologized, and said, “I am sorry. I was following you because I thought you were following me. Do you want my name and address?”

And he said, “No”

And I told him I was fed up with being followed and

Philemon Ewing—For N.L.R.B.—Direct

3319

from that time on, it was the spring of 1934, from that time on, I didn't notice so much of it, and it must have been done by a better grade of detective.

Judge Ransom: I move to strike out the entire argument of the witness on the grounds already stated, on the grounds further that it is

S. M. 1307

purely hearsay and involves a statement of what this witness felt. I have no doubt this witness felt all sorts of things. He was followed by almost everybody in creation, and I further make the point, as a grounds for my motion, that it now affirmatively appears that any such feelings or psychoses on the part of this witness ante dated the time alleged in the complaint or the period alleged in the complaint is that from and after which any events of this character took place; that the complaint here specifically and definitely relates to a period from and after July 5, 1935, and there has been no notice of hearing and no complaint which tenders any issue in those respects as to this employee or any others prior to July 5, 1935.

3320

3321

Trial Examiner Gates: The answer may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What took place on the day you were last employed by the company? A. I worked in the morning as usual at Long Island City. Then I went to Flushing and did the morning test there and was waiting for the afternoon test when I got a phone call from my immediate supervisor, Mr. Nikowsky, telling me, "I have to inform you"—or something like that—"that after today your services are no longer required",

3322

Philemon Ewing—For N.L.R.B.—Direct

and he asked me to do the afternoon test at Flushing and then come to the office at Irving Place.

Q. Did you go to the office at Irving Place? A.

S. M. 1308

That's right.

Q. What happened there? A. They told me I was no longer needed; they showed me—

3323

Q. Who told you? A. Nikowsky, I believe, and they showed me some letters saying they had closed down a coal gas unit in Astoria, or something like that, and therefore they didn't need so many people and so on and so forth and they gave me a week's pay for every year in the company and Mr. Thomkins, the assistant chief chemist, said, "Of course, this has nothing to do"—no, I asked him if my work was satisfactory, and either I asked or he volunteered the statement that my work was satisfactory, "that it is an unfortunate thing the company is compelled to do this due to being overmanned" or words to that effect. In other words, it was purely a reduction in personnel.

3324

Q. Was there any discussion with you about your union activities at that time? A. No, there wasn't.

Q. Did you ask anything about it? A. On that particular occasion?

Q. Yes. A. No, but at the E.R.P., at a meeting of the E.R.P.—

Q. That was afterwards? A. Prior to that and also

S. M. 1309

afterwards it was taken up by the general council and some motion was passed.

Q. What meeting of the E.R.P. are you referring to?

Judge Ransom: I object to that as wholly outside of any issues here.

Philemon Ewing—For N.L.R.B.—Direct

3325

Trial Examiner Gates: Just a moment. When an objection is being made.

Judge Ransom: I object to that on all the grounds stated previously as to this witness' testimony.

Trial Examiner Gates: Objection overruled.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What E.R.P. meeting are you referring to before your discharge? **A.** A meeting was called.

Q. What date? **A.** I would have to refer to here, it was a day or two before I was fired, it was in the air, rumors that Selassie and I were going to be fired and our delegate called a meeting I believe it was the night before we were fired.

3326

Judge Ransom: I move to strike out the witness'—

Trial Examiner Gates: When Mr. Ransom says that he objects, please don't answer.

The Witness: All right.

Judge Ransom: I move to strike out the witness' self-serving declaration as to what he mentally regarded as rumors.

3327

S. M. 1310

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) What was the purpose of the meeting and where was it held? **A.** It was held in Room 1831, I believe it was 1813, the regular room of the E.R.P. for the guests and the employees after five o'clock. I believe it was the day before we were fired or possibly two days before, I think it was the day before, though, and he told us then—

Philemon Ewing—For N.L.R.B.—Direct

Q. Who told you? A. Bishko, our delegate told us that he had received notice that we were being fired and the purpose of the meeting was to deal with the justice or the injustice of the matter. If you will permit me I think I have a statement in here of the E.R.P. in connection with that, it will take me a second to get that out.

Q. You won't need that; if you will just give us any further statement you can on the purpose of it? A. That meeting?

Q. Yes. A. Well, that was the sole purpose.

Q. I see. And what was done about it? A. It was appealed to the general council.

Q. You mean the fact that there was— A. Our dismissal was appealed.

S. M. 1311

Q. Well, you hadn't been dismissed then? A. Well, we had received notice we were going to be dismissed.

Q. The E.R.P. had? A. Yes.

Q. And had they already appealed it or did they appeal after the meeting? A. Well, after the meeting because the exact time when the appeal was made, I don't know, it was after that meeting and some time before the following Monday.

Q. I see. So that the appeal was taken after the meeting and not really lodged until you were discharged? Is that right? A. Possibly so, or possibly it was lodged before, only on the day I was discharged I don't know.

Q. I see. Then what was done after your discharge? A. After my discharge?

Q. After you and Selassie were discharged? A. Why, some motion was passed, resolution was passed by the general council, a copy of which I have here.

Q. Yes. A. I don't remember the exact contents of it because it was a year and a half ago, if I can take this—

Philemon Ewing—For N.L.R.B.—Direct

3331

Q. Well, what is your recollection of it? A. My recollection of it is that they considered it unjust to lay us off or fire us and requesting that we be retained or reinstated and the answer of course was no.

S. M. 1312

Q. The answer from whom was no? A. From the company, through Vice President Stillwell, and Vice President Stillwell told our delegate, Bisko, that under no circumstances would Selassie and Ewing ever be taken back by the company.

3332

Q. Do you know about when that was made, that statement? A. The week end of our firing, within a day or so.

Q. And what was the Brotherhood of Utility Employees doing for you and Selassie if anything at that time? A. Well, they went to the Regional Labor Board, but at that time the N.R.A. had been—

Q. Well, outside of steps that they may have taken with the Regional Labor Board, did they take any steps in the company? A. Well, they protested and they sent out a press release accusing the company of, which was printed in practically all of the papers, accusing the company of firing us for union activity.

3333

Q. But did they go to see the company about it, do you know? A. Not that I can recollect.

Q. All right, and what did you personally do further about it, if anything, or you and Selassie, did you do anything about it? A. Oh, the union picketed the company's buildings for awhile and we participated in that, aside from that I don't remember having done anything on the case.

S. M. 1313

Q. And was that the last you worked for the company? A. That's right.

3334

Philemon Ewing—For N.L.R.B.—Direct

Q. And have you been working since? A. No, I just about a month ago, I got a W.P.A. job, prior to that I was on home relief practically since the month after I was fired.

Q. Until a month ago? A. That's right.

Q. What did you do, get paid a certain amount from Home Relief? A. Yes, about \$26.00 a month.

Q. A month? A. That's right.

3335

Q. Where are you working now? A. At 480 Canal, I think the number is, it is a purchasing department, New York City, analyzing and testing coal.

Q. Is that W.P.A.? A. That is a W.P.A. project for the city.

Q. You have been doing that for a month? A. Approximately a month, I don't work every day, of course, a certain number of days.

Q. Do you get paid by the day or the week? A. I get paid, well, on an hourly rating, I mean by the hour.

Q. What do you get an hour? A. Well, it comes to

S. W. 1314

3336

\$9.09 for an eight hour day, but I work, it is \$95.00, I think for a four week period.

Q. \$95.00 a month? A. That's right.

Q. That is figuring a month as a four-weeks period? A. That's right.

Q. And that is where you are still working? A. That is right.

Q. Now, do you do anything yourself—did you do anything yourself with Selassie outside of what you have already told us to go back to work with the company? A. I can't recollect, I might have done something else.

Q. Or do you recollect anyone else doing anything for you? A. Not offhand, there may have been protests

or requests by the union to the company but I don't recollect it.

Mr. Moscovitz: That is all.

S. M. 1315

CROSS EXAMINATION:

Q. (By Judge Ransom) You were in what department of the Consolidated Gas Company? A. The chemical department.

Q. From what office did you work? A. No. 4 Irving Place. 3338

Q. You went to work with the company with what rating? A. Junior tester. I was called at that time, in the beginning.

Q. And your rate of pay was \$20 a week? A. That's right.

Q. Then, I think you said that in 1931, as part of salary adjustments in your department, you were raised to \$22.50? A. That's right.

Q. That was for how many hours a week? A. Let's see—I have to stop and think—I think it is 39—let's see—no, 38 hours a week, 3339

Q. Then, in the spring of 1933, under the general reduction in the hours of work, and the rate of pay per hour, leaving the rate of pay per hour unchanged for the fewer hours, your salary went down to \$20.62; did it not? A. Something like that.

Q. That was for how many hours? A. Well, that was for three hours less.

Q. You didn't work on Saturdays? A. No.

S. M. 1316

Q. Then that was for a 35 hour week? A. That's right.

3340 *Philemon Ewing—For N.L.R.B.—Cross*

Q. Then throughout the company, in 1934, there was an increase in the rate of pay per hour so as to restore half of the previous reduction? A. That's right.

Q. And that brought you back to \$21.50 per week for a 35-hour week? A. Something like that, yes.

Q. And during all that time, you were a junior tester? A. I believe so. My title was changed, but I don't know just exactly when.

Q. Well, in September of 1934, there was a general reclassification of salaries and titles, was there not?

3341 A. No, sir.

Q. In your department? A. No, sir.

Q. You don't know anything about a general reclassification? A. I know there was not one. I can give you the information if you want it.

Q. It probably wouldn't be right so there is no use in having it.

Mr. Moscovitz: I object to that statement, Mr. Examiner. It probably would be right and that is why Judge Ransom doesn't want it.

S. M. 1317.

3342 I withdraw that statement, the last part of it.

Q. (By Judge Ransom) In any event, at that time your title was changed? A. It was probably in September when my title was changed, when I got a \$5 raise.

Q. That was some time after the increases had been granted, the like increase that had been granted to various others who were doing the same kind of work? A. That's right.

Q. At the time you spoke about January 16th or 18th of 1936, your rate of pay was \$26.35 for 35 hour week? A. That's right.

Q. Now, in the chemical department of the company,

your duties were the testing of gas for its heating value?

A. That's right.

Q. By the way, how old were you on January 17, 1936? A. 31½.

Q. What? A. 31½.

Q. And were you married or single? A. Single.

Q. This testing for gas or its heating value, did that take place in 15th Street, or did it take place at various places on the district? A. I have done it all over, including occasionally at 15th Street once or twice.

S. M. 1318

Q. In the various course of your duties, where was it done? A. At various district stations throughout the city.

Q. Where were those stations located? Will you state for the record? A. Surely.

Q. Yes. A. One was at Elizabeth and Hester; another was 79th—

Q. That is in the Borough of Manhattan? A. That's right.

Q. Yes. A. Another was at 79th Street and 3rd Avenue in Manhattan.

Q. Yes. A. One was at the Gas & Electric Building on Roosevelt Avenue in Flushing, right near Main St.

Q. Yes. A. Another was Long Island City. For the like of me I don't know the number of that street. I don't know those Queens streets very well. It was right next to the Paramount Studios out there.

Q. Yes. A. There was one at 529 or 629 Cortland Avenue in the Bronx.

Q. Yes. A. There was another one at 1555 Purdy St. in the Bronx.

S. M. 1319

Q. Yes. A. Then there were several others. One

3346

Philemon Ewing—For N.L.R.B.—Cross

that was opened up at Amsterdam Avenue in the 170's. I worked there for a while. It was, I believe, a temporary station.

Q. Any more? A. There was one over in the Northern Union Building, further east, in the Bronx. I worked there for a period. I think it was Webster Avenue. I am not certain.

3347

Q. Now, do you know who established the location of these testing stations? Are they established by the city or by the Public Service Commission? A. The Public Service Commission established at least most of them. As to every single one of them, I couldn't say, like the Amsterdam Avenue one—I don't think they established that.

Q. Were you aware of any distinction between testing stations that had been fixed and located by the Public Service Commission and any which had been fixed and located by the City of New York. A. Yes.

3348

Q. That is, there were some of these that were testing stations established by the Public Service Commission and others that were fixed and established by the city? A. Well, as to the second ones, I don't know that they were definitely established by the city, but they were in one case like the Amsterdam Avenue, I under-

S. M. 1320

stand it was put there checking the city, which I believe had one nearby there somewhere.

Q. Do you know that they were both city testing stations and stations at locations fixed by the Commission, the Public Service Commission? A. That's right.

Q. The value of gas to the consumer depends on its heat content, does it not? A. Yes.

Q. And that is expressed in the terms of British Thermal Units? A. Per cubic foot.

Q. Who establishes the required heat content of gas sold in the city of New York? A. The Public Service Commission.

Q. That is fixed by the order of the Commission? A. Well, now, I can't recollect, either by the legislature or by the Commission, I don't know but it has been some time since then, I did know.

Q. And you have not any idea whether that is by order of the Commission or by statute of the State? A. I did, but I don't now, it is some time since I have given any thought to these matters.

3350

Q. But in any event, either by the legislature or by an order made by the Public Service Commission, there

S. M. 1321

is a required heat content of gas to be supplied in this locality? A. That is right.

Q. And do you know whether that is a local standard for the city of New York or it applies outside of the city?

A. Different standards apply in different communities, all governed by the Public Service Commission.

Q. That is, the standard for the city of New York is a local standard? A. That's right.

3351

Q. These testing stations that you speak of, are located at these various points, which you mentioned on the company's gas mains through the city? A. Yes.

Q. And is the purpose of these tests to have a record of the quality, the heat content of the gas, as it goes to local consumers in these various parts of the district?

A. That's right.

Q. And do you know whether, in addition to the requirements of the state of New York as to the gas supplied locally within the city of New York, there are also requirements of the city of New York itself either under contract or statute? A. I know that there was a dispute

3352

Philemon Ewing—For N.L.R.B.—Cross

between the city and the state on the matter, but my understanding was that the state had the say in the matter

S. M. 1322

and the city was sort of, the stations, from a legal standpoint was sort of superfluous since the state was the one that had the say in the matter.

Q. But in any event you know that the city of New York did claim a right to require that the gas supplied to it locally should be of a certain B.T.U. standard? A. That's right.

3353

Q. And such testing stations as were city stations were for the purpose of seeing whether the gas kept up to the standard? A. That's right.

Q. Were these testing stations located at gas plants, or were they located out on the district away from plants? A. They were located out on the districts, to give gas as it was received by the customers rather than gas as made at the plant.

3354

Q. That is, generally speaking, were these locations in populous and congested districts where there were many consumers? A. The one at Elizabeth Street was, the one at 79th Street was, the one at Certland Avenue, Bronx, was, the one at Purdy Street was more open, it was one-family houses around there and some vacant lots.

Q. You are speaking now of Purdy Street where? A. In the Bronx.

S. M. 1323

Q. The Bronx? A. Yes.

Q. Go ahead. A. The one at Roselle Avenue, Flushing, was in a populous district, the one at Long Island City, though, had considerable vacant lots right around it

and two story houses in the immediate vicinity mostly.

Q. In any event, these were testing stations that tested the quality of gas delivered to local consumers?

A. That's right.

Q. Were these—strike that out. Let's take the 79th St. testing station, that was one that you were serving, wasn't it? A. Yes, sir.

Q. Will you describe that station? A. The station?

Mr. Moscovitz: Mr. Examiner, I don't quite see the purpose of relevancy of this line of cross examination.

3356

Judge Ransom: I think it will appear in time, I may be rather slow about it.

Trial Examiner Gates: Very well, proceed.

The Witness: The station was located on the top floor of what I suppose would be called a tenement house. The whole floor was leased by the company, but only two rooms used for testing pur-

S. M. 1324

poses. The rest of it is sub-letted to an employee.

Q. (By Mr. Ransom) That is, an employee lived on the rest of that floor? A. That's right. 3357

Q. He works for the company? A. That's right.

Q. That is, he does not work at the testing station? A. No.

Q. What was true of the rest of the building, was the rest of the building an ordinary tenement house? A. Let's see, what was directly underneath, directly underneath a family occupied it, underneath, that was a city testing station, gas.

Q. And the rest of the building was occupied as— A. Well, the ground floor, I mean one flight up was a dentist and then on the ground floor there was an optometrist.

3358

Philemon Ewing—For N.L.R.B.—Cross

Q. Then this testing station was two rooms on the top floor of the tenement house? A. It was what?

Q. It was two rooms on the top floor of this tenement house? A. Yes.

Q. And it was brought up from the street by risers just as it would be brought into any other residential premises? A. That's right.

Q. Now, what was in this testing station in these two

S. M. 1325

3359

rooms that comprised this testing station? A. Well, I will dispose of the outer room first, because that is the quickest. There was an old apparatus for measuring the candlepower of the gas, that was no longer used because the legal requirement for candlepower had long since, that was the old station by the way was still in service so that was why that apparatus was still there, but in addition there were pressure charts for various mains in that room, and I had practically nothing to do with that room.

The inner room had a cabinet with a calorimeter in it, a specific gravity apparatus.

3360

Q. What is a calorimeter, is that a kind of an apparatus on which Mr. Solosky worked? A. Not in the latest period, not mainly, he used a different type of calorimeter, a more complicated type of apparatus.

Q. But in his tests he used the calorimeter? A. Yes, a different kind though.

Q. What is a calorimeter? A. It is an instrument for measuring heat in any way or measuring—

Q. Well, I think he said that a calorimeter was a kind of an apparatus that was used on customers' premises usually? A. What?

Q. On customers' premises, calorimeters are used

S. M. 1326

there? A. Oh, yes, on customers' premises like in the test station, you mean?

Q. Well, when customers want a test of the heat value of gas? A. Oh, I don't believe so. I don't think I ever heard of a customer wanting it.

Q. Go ahead with the description of the room where you did your work. A. Then there was an apparatus for the analysis of gas. Do you want details?

Q. Yes, give some details. A. There was an apparatus for testing due point of gas. Another apparatus used for testing if there was any hydrogen sulphide in the gas. Then there was an air-cooled condenser for testing, for determining, the amount of sulphur in gas. Then there was another apparatus for the use of testing for ammonia in gas, the amount of ammonia in gas. Then there was a standard meter bottle there for standardizing, not the calorimeter, but the meter itself when need be. That was the main equipment.

3362

There were incidentals.

Q. How many employees would be at this testing station when you went there? A. None.

S. M. 1327

3363

Q. Any? A. Normally only one, whoever worked there.

Q. You mean whoever went there? A. That's right.

Q. That is, there were no employees stationed there? A. That's right.

Q. When you went there, you went alone? A. 99 per cent of the time, that's right.

Q. How did you get in? A. Well, they used to be—I think, during the same period, I may have had a key. I don't know. But I know at other times there was a key hanging up behind a couple of doors against the

3364

Philemon Ewing—For N.L.R.B.—Cross

wall. There was a key on a nail there. The rest of the time we got in by whoever lived there and on one occasion they went out to church when I had to do night testing and I was not expected, so I had to climb up the fire escape to get in.

Q. Where was that? A. That was at 79th St.

Q. But at all the testing stations there were no employees there regularly, only the man who came there to make the test? A. Yes, excepting possibly at Elizabeth Street, wherever work was done as well.

3365

Q. The Elizabeth Street testing station was at or

S. M. 1328

near one of the branch offices? A. Near one.

Q. The only person who would be there would be the person who went to make the test? A. That's right.

Q. Now, when you went to a testing station, let's say this 79th St. one, how long were you there? A. That would depend on what I was supposed to do there, see. There were different tests, but not all of us were required to do all of the tests.

3366

Q. What ones were you ordinarily required to make in the course of your duties? A. Well, normally there used to be three mains there, a double test on each main in the morning for B.T.U.'s, and then a check testing case, I got results below whatever the figure happened to be set at that time, and then tests on hydrogen sulphide, due point, gravity on each one of the mains. That would be for morning and afternoon.

Then, analyses of the gas, the number of analyses numbered from time to time, how many we had to do, I mean, it would vary.

Q. How long would all this take ordinarily at one testing station, how many hours? A. I don't know. Let's see, perhaps an hour and a half or two hours at 79th St.

S. M. 1329

Q. And how often would you go to that station? A. I can't answer just that way, you see, because the assignments varied. Now, the one time I was stationed at that station alone, and another time I had a combination of that station and Hester St., later on when they began to tighten up a bit.

At another time I had to do Long Island City and Flushing and the afternoon test at that station, and another time I had to do night tests at that station, when all I had to do was B.T.U.'s. The assignments varied.

3368

Q. In any event, your work at any one of these stations would take several hours, wouldn't it? A. Well, no. If there was only one main in a station, as in most of them, it would take, well, a half hour, three-quarters of an hour, depending, you see, on weather conditions, we had to get the air, the water and the gas all pretty much at the same temperature. We might have had a little trouble on that if there was no hot water, we would have to heat some.

Q. You say you made these chemical tests of ammonium sulphide and the like, sulphur, do you know whether those tests were likewise under some rule or requirement of the Public Service Commission? A. That's right, that's right.

3369

Q. And do you know whether there was any require-

S. M. 1330

ment in those respects under city contract? A. I don't recollect.

Q. In any event, for all of these testing stations you have mentioned, there were eight men in your department who were doing that kind of work? A. Well, not quite exactly that way. I estimated about eight men under Mr. Mekowskey, and he had that job. He also

3370

Philemon Ewing—For N.L.R.B.—Cross

had other jobs under him of testing air in manholes. I mean, samples of air, when a purging job was to be done for opening up a gas line, or anything like that, he had also these other things in his section and I would have to stop and count them, the exact number of them there, but I estimated about eight.

Q. Well, it was some such number? A. Yes.

Q. Now, Dr. Lunn, about whom you have testified, was he the chief chemist, the head of the chemical department? A. Dr. Lunn?

3371 Q. Lunn? A. Yes.

Q. He was the chief chemist? A. That's right.

Q. The head of the chemical department? A. That's right.

Q. You testified about the organization of the Brotherhood of Utility Employees in October of 1933.

S. M. 1331

Who, as you understand it, organized that brotherhood at that time? A. The employees—excuse me, October, 1933, that's right.

Q. Well, who organized— A. The employees.

3372 Q. What? A. The employees.

Q. I am asking for names. A. Well, there was—I can only name names that are known. There was a man Robert Berry.

Q. Yes. A. There was another one Gordon Mitchell.

Q. Yes. A. That is all I can recollect off-hand. There were others. Oh, there was Jake Shulter.

Q. Well, Robert Berry. Is he working for the company now? A. That's right.

Q. Gordon Mitchell? A. That's right. That is unless he got fired in the last month or so.

Q. I am asking now about Gordon Mitchell. A. No.

Q. He is not employed? A. No.

Q. Who else did you mention? A. Jake Shulter.

S. M. 1332

Q. Where did he work? A. I believe he worked in the New York & Queens.

Q. Is he still employed by the company? A. No, he got fired approximately a year and a half ago.

Q. You say this is October, 1933 or '32? A. '33.

Q. Now, when was it you say you had this feeling or sensation of being followed? A. Oh, that occurred at different times.

3374

Q. Well? A. The first time was in the Spring of '34.

Q. The Spring of '34? A. That's right.

Q. And can you fix the date more definitely? A. I am afraid I can't. It was in the Spring months then.

Q. Any time after that? A. Oh, yes.

Q. When? A. Also in the summer of '35.

Q. Well, what month? A. Various months, somewhat in the Spring, too, say, April, June, perhaps, and also August even. For one thing, there was a man who lived next door to me in the next—

Q. I am just asking you what time? A. Oh, excuse me.

3375

S. M. 1333

Q. Any after August? A. Yes, it seemed to me, I would come home from the union office, it seemed as if there was somebody watching my house, some people that behaved very suspiciously on several occasions. That would have to be in September or later.

Q. Well, how much later? A. Well, after I got elected secretary.

Q. When were you elected secretary? A. The beginning of September.

Q. 1935? A. That's right.

3376

Philemon Ewing—For N.L.R.B.—Cross

Q. That is, you joined the Brotherhood in October of 1933? A. That's right.

Q. That was when your circularization of literature began? A. No, I even did some prior to that, but I did not have a membership card until then.

Q. But you had been circulating Brotherhood literature before that? A. That's right.

Q. Any other kinds of literature? A. What do you mean, other kinds?

3377 Q. I mean, had you been distributing anything else to employees except Brotherhood literature? A. Federation literature.

S. M. 1334

Q. What federation? A. Federation of Architects, Engineers, Chemists & Technicians.

Q. Anything else? A. I don't know.

Q. Well, why are you looking at Mr. Moscovitz? A. I beg your pardon?

Q. Why are you looking at Mr. Moscovitz, why not answer the question?

3378

Mr. Moscovitz: He probably is looking for an inspiration, Judge.

The Witness: Well, I may have given other things out.

Q. (By Mr. Ransom) What? A. What?

Q. Yes. A. Various labor things, pointing out the advantages of unionism.

Q. Published by whom? A. I don't recollect offhand.

Q. You mean to say you don't recollect? A. Various things, Heavens, there is all different things.

Q. You don't want to tell this Board what they were or who published them? A. Well, how can I remember every little thing, Judge, that is five years ago, I don't keep a diary.

Q. Well, what organizations were you affiliated with

S. M. 1335

at that time? A. The Brotherhood, the Federation.

Q. Any others? A. Well, I decline to answer.

Q. I thought so. A. I mean I don't know whether I have a legal right to, but—

Q. You just decline, do you? A. Yes.

Mr. Moscovitz: You don't decline to answer the labor organizations you belonged to at that time, do you?

3380

The Witness: No.

Q. (By Mr. Ransom) You said that when your employment was terminated, you received the separation allowance? A. That's right.

Q. And that was what, in amount? A. Well, it was somewhere in the neighborhood of \$150, it was a week for every year I had spent in the company.

Q. That's a week's pay for every year you spent with the company? A. That's right.

Q. That was after June 18, 1936? A. June 18th?

Q. January 18th? A. January 17th is right.

3381

Judge Ransom: I think that's all.

S. M. 1336

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) When you were discharged, was any reason other than the one you have already given assigned for your discharge? A. No, it was made clear that it was not for unsatisfactory service.

Q. And the only reason given was that one place was shut down and there was going to be a transfer of employees and you had to go, is that it? A. That's right.

Philemon Ewing—For N.L.R.B.—Redirect

Q. Do you know whether or not any new person was brought in to take your place? A. Since then, no, they merely speeded up all the men all around, that's all.

Q. Was there plenty of work for you at the time you were let out? A. Let out?

Judge Ransom: I object to that as calling for a conclusion.

The Witness: I worked hard.

Trial Examiner Gates: Do you wish to state a further objection?

Judge Ransom: What?

Trial Examiner Gates: Do you wish to state a further objection?

S. M. 1337

Judge Ransom: All I object to is calling purely for a conclusion.

Trial Examiner Gates: The record may stand.

Q. (By Mr. Moscovitz)—You said, "and how"? A. I said, "Yes, there was plenty of work for me, I was kept occupied without any difficulty"

Q. Was there any let down in your work from what it had been? A. Yes, the time they tried to speed me up and I kicked and then they finally let down.

Q. I know, but were your regular duties decreased immediately before your discharge or were they on the same level or were they increased immediately before your discharge? A. As far as I can recollect, they were about the same, I have here approximately some carbon copies of tests done at that time just preceding my being fired, I mean, a carbon copy of the hours, so if it is worth while to dig them out, I don't know whether it is worth while to check on them or not.

Q. How many hours were you working? A. The regular seven hours a day.

Philemon Ewing—For N.L.R.B.—Recross
Terrence McGowan—For N.L.R.B.—Direct

3385

Mr. Moscovitz: That's all.

RECROSS EXAMINATION:

Q. (By Mr. Ransom) Do you know whether there has been any decrease in the number of testing stations?

A. Since?

S. M. 1338

Q. No, during the time you were at work? A. No, if anything, they were increased, these extra ones were put on like Amsterdam Avenue and this one up at Northern Union Gas.

3386

Q. When was that? A. That was in the summer of '35, I believe.

Q. You say you were laid off or discharged? A. I claim discharge for union activity.

Judge Ransom: That is all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. McGowan.

3387

TERRENCE MCGOWAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 1532 Amsterdam Ave.

Judge Ransom: Speak up so you can be heard.
 The Witness: 1532 Amsterdam Avenue.

Q. (By Mr. Moscovitz) New York City? A. That's right.

3388

Terrence McGowan—For N.L.R.B.—Direct

Q. By whom are you employed at the present time?

A. By the New York & Queens.

Q. In what line of duty? A. The overhead bureau, Elmhurst Line department.

S. M. 1339

Q. How long have you worked for the company? A. Since 1926.

Q. Were you at one time a member of the E.R.P.?

A. Yes.

3389

Q. Been a member of the I.B.E.W.? A. Yes.

Q. Now a member of it? A. C.I.O.

Q. U.E.R.W., which is affiliated with the C.I.O., is that right? A. That's right.

Q. When did you become a member of the U.E.R.W.?

A. In 1935.

Q. That is the C.I.O.? A. C.I.O.

Q. Yes. A. Well, that was—

Q. That is the United Electrical Radio Workers? A. That was in, when we swung out of the I.B.E.W. into the C.I.O., that was in March, I think, of this year.

Q. Are you an officer of the C.I.O.? A. No.

3390 Q. Were you an officer of the I.B.E.W.? A. No.

S. M. 1340

Q. The E.R.P.? A. No, any more than to be a steward.

Q. A steward under the E.R.P.? A. Yes.

Q. What does a steward do under the E.R.P.? A. Well, you have got to collect dues, mainly collect dues.

Q. Now, you say you became a member of the C.I.O. some time in March, 1937, is that right? A. That's right.

Q. After becoming a member of the C.I.O. in March, 1937, do you recall whether or not your supervisor dis-

Terrence McGowan—For N.L.R.B.—Direct

3391

cussed with you the question of becoming affiliated with any other labor organization? A. No.

Judge Ransom: What was the answer?

The Witness: No.

Q. (By Mr. Moscovitz) Were you with any other men after March, 1937 called into your supervisor's office? A. Yes.

Q. When, do you recall? A. Oh, April 22nd.

S. M. 1341

3392

Q. Was it during your regular working hours? A. That's right, it was between the hours of eight and twelve.

Q. And were the other men overhead bureau men too? A. Yes.

Q. How many? A. Well, I can't give a definite number, I will say eight or seven were in the gang.

Q. About seven? A. Yes.

Q. Who called you into the supervisor's office? A. We were called in by Mr. Martini.

Q. What's his first name? A. That I don't know.

Q. Is that the Mr. Martini who had previously been with the E.R.P. in an official capacity, do you know? A. The E.R.P.?

3393

Q. Yes. A. I don't know.

Q. Do you know where he comes from? A. What's that?

Q. Where does Mr. Martini come from, did he work in your bureau? A. Yes, he works in our bureau.

Q. And had he been in the E.R.P. with you? A. In the E.R.P.?

S. M. 1342

Q. Yes. A. Yes.

3394

Terrence McGowan—For N.L.R.B.—Direct

Q. What capacity do you know, what was his job there? A. He was our delegate.

Q. Your delegate? A. Yes.

Q. All right, and who else was in the supervisor's office outside of Mr. Martini and your crew? A. Mr. Sutton.

Q. Who is Mr. Sutton? A. He is also a delegate from Jamaica.

Q. A delegate of the E.R.P.? A. Yes.

3395

Q. Mr. Martini was not a delegate from the Jamaica bureau? A. No, he was Elmhurst.

Q. Anyone else? A. No.

Q. Who was your supervisor? A. Mr. Connelly.

Q. What's his first name? A. James Connelly.

Q. Was he in the office? A. He was, there was a partition between where he was and we were.

S. M. 1343

Q. Was it your office he was in? A. Yes.

Q. His regular office? A. Yes.

Q. And while you all were in his office, where was he? A. He was outside of the partition. It is a glass partition in between the two.

3396

Q. Could he see through? A. Oh, yes.

Q. What was he doing? A. That I don't know.

Q. Was he alone? A. No, no, he was in the room where all the clerks were.

Q. In other words he stepped out of his office to let it be used by you people? A. That's right.

Q. Was he in the office when you first walked in? A. Was he in the office when we first walked in?

Q. Yes. A. No, he was outside the partition.

Q. Do you know whether or not he was in the office with Mr. Martini before you all walked in? A. I don't know.

Terrence McGowan—For N.L.R.B.—Direct

3397

Q. Was Mr. Martini in the office alone before you all walked in? A. He was with Mr. Sutton.

S. M. 1344

Q. Do you know whether Mr. Conley was with the two of them when you walked in alone? A. I don't know.

Q. That is only a matter of conclusion, is that right? A. Yes.

Q. What took place after you were called in? A. We were called into the office and Mr. Martini said to us, "Well," he says, "you understand that the company has recognized the I.B.E.W." So there was a little discussion and the discussion I can't remember at all, so I asked him if it was permitted to ask questions and he said yes.

3398

"Well," I says to him, "I think on my estimation," I said, "this is coercion and intimidation on the company's part to take us in behind closed doors to get us to sign up I.B.E.W. cards."

He agreed with me on that point. There was further discussion but I can't recall it.

Q. Well, do you know whether or not either one of these two men came out to your job at any time? A. Yes.

3399

Q. For the purpose of securing membership in the I.B.E.W.? A. Well, yes, Mr. Sutton come out on the job. Now, the date I don't know.

Q. Was it after the meeting of April 22nd? A. That's right.

S. M. 1345

Q. Yes. A. Driving a company's car, accompanied by another man which I don't know, and the other man I don't know. As I said. And the only two he spoke to on that day was a foreman of the gang.

3400

Terrence McGowan—For N.L.R.B.—Direct

Q. What was his name? A. Hopt, Charlie Hopt.

Q. Hopt? A. Hopt, yes.

Q. All right. A. Another man was with him in the car which I didn't know. He spoke to the foreman of the gang and also to the chauffeur but he didn't approach none of the other men at all in the gang.

Q. What took place? A. That I don't know, what took place between them.

3401

Q. All you know is that Mr. Sutton came out in a company car and spoke with the foreman and chauffeurs? A. That's right.

Q. Well, had he ever done that before, to your knowledge? A. Not to my knowledge.

Q. Did he do it at any time afterwards? A. Yes, once again.

Q. When? A. The date I can't remember but it was

S. M. 1346

within a couple of weeks afterwards he come out again.

Q. What did he do then, do you know? A. He also spoke to the foreman and the chauffeur got the constitution of the I.B.E.W. off of him.

3402

Q. The chauffeur what? A. The chauffeur on the truck.

Q. Yes. A. Vande Water is his name.

Q. Yes. A. And he got a constitution of the I.B.E.W. off Mr. Sutton.

Q. Yes. A. He was also accompanied by another man which I was told was Mr. Turner.

Q. Well— A. This Mr. Turner, I think was a delegate also in Jamaica.

Q. Did your foreman ever speak with you about Sutton's visits? A. No, he never spoke to us about his visits.

Q. Did you ever speak with the foreman about the

Terrence McGowan—For N.L.R.B.—Cross

3403

visits? A. No, all that he said to us was one morning as we were working, he said, "Did youse sign up yet?"

Q. All that he asked you— A. Yes, we signed up.

Q. Was it before or after these visits from Mr. Sutton? A. After those visits.

S. M. 1347

Q. Did he ask you just once? A. Yes, just once.

Q. After the first or second visit? A. After the second visit.

Q. Did you ask him whether or not he was securing membership? A. No, I didn't ask him.

3404

Q. Did he volunteer a statement to you? A. No.

Q. Concerning it? A. No, he just asked us if we signed up and I said I did not, that I was talking for myself and I couldn't speak for anybody else.

Q. He didn't make any statement about the percentages of men that he had secured for the I.B.E.W.?

A. No, no.

Q. That's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) Was your work in the overhead bureau? A. Lineman.

3405

Q. Now, what grade lineman are you? A. First class lineman.

Q. And you are in the Elmhurst District? A. That's right.

Q. Were you a member of the Brotherhood of Utility Employees? A. Yes.

S. M. 1348

Q. When did you join that? A. In 1935, spring of 1935.

Mr. Moscovitz: Judge, may I ask him one question?

3406

Terrence McGowan—For N.L.R.B.—Cross

Judge Ransom: Certainly.

Mr. Moscovitz: You have been talking about membership in the E.R.P. Were you ever a member of the plan, what is commonly known as the company plan?

The Witness: Yes, the company plan.

Mr. Moscovitz: Is that what you meant at that time?

The Witness: Yes.

Judge Ransom: Is that all, Mr. Moscovitz?

3407

Mr. Moscovitz: Yes, thank you very much.

Q. (By Judge Ransom) And you were in the Brotherhood Local until it became an I.B.E.W. local? A. That's right.

Q. Then you were in this I.B.E.W. local until it became a C.I.O. local? A. That's right.

Q. Now, you spoke of being a steward under the E.R.P., the Employees Representative Plan, and that you collected dues. Who elected— A. Not under the E.R.P. I made a mistake there.

Q. I thought you must be mistaken. A. That was in the Brotherhood of Utility Workers.

3408

Q. You were a steward in the Brotherhood? A. That's right.

S. M. 1349

Q. Local union? A. That's all.

Q. And you collected dues in that capacity? A. That's right.

Q. And you never collected dues, nor anyone else under this Employee Representation Plan? A. No, no, no.

Q. Did you hold any office under the E.R.P.? A. No.

Q. But you voted as an employee in the choice of delegates? A. Yes.

Q. There wasn't any such office as steward under the E.R.P., was there, no office or steward or any system of collecting dues under the E.R.P.? A. May I get the question?

Q. I say there was no office of steward under the E.R.P.? A. No office as steward?

Q. Yes. A. Under the E.R.P.?

Q. Yes. A. Well, I don't know, I couldn't say if there was an office or not.

Q. This day that Mr. Martini and Mr. Sutton asked you into what was the office used by Mr. Conley, was that

3410

S. M. 1350

a rainy day, do you remember? A. No.

Q. It wasn't? Are you sure about that? A. Well, the morning was raining, but it cleared up then.

Q. And this took place during the morning? A. Between the hours of eight and twelve, yes.

Q. And you and other linemen were around there at the district office? A. Yes.

Q. You hadn't gone out on the job on account of the weather? A. At that time it wasn't raining because—

Q. I am asking you whether at that time you had not gone out to work as a lineman? A. Oh, no, no.

3411

Q. On rainy days, you don't go out until the weather clears? A. That's right, unless it is an emergency.

Q. Now, Mr. Martini is a member of the I.B.E.W., is he not? A. Of the I.B.E.W.?

Q. Yes. A. Well, yes, I guess he is, as far as I know.

Q. And Mr. Sutton? A. Yes.

Q. The foreman of your gang. You said his name was Hopt? A. Yes.

Q. Hopt? A. H-o-p-t, I think.

S. M. 1351

Q. Do you know whether he was and is a member of the I.B.E.W.? A. That I don't know.

3412

Franklin De Lude—For N.L.R.B.—Direct

Q. And you joined the C.I.O. in March of 1937? A. That's right.

Q. How long had you been employed as a lineman in the Elmhurst district? A. I was employed in 1936.

Q. And you have been a lineman in that district ever since? A. Well, no, I wasn't a lineman when I got pushed out, you see.

Q. When did you become a lineman? A. Well, in 1928 I became a lineman.

Q. That's all.

3413

Trial Examiner Gates: We will take a short recess.

(Whereupon a short recess was taken.)

AFTER RECESS

Trial Examiner Gates: Proceed.

Mr. Moscovitz: I will call Mr. DeLude.

FRANKLIN DE LUDE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

3414

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. De Lude? A. 30-41 37th Street, Astoria.

Q. Are you employed at the present time?

S. M. 1352

Q. Where? A. Consolidated Edison Company of New York, Incorporated, at 4 Irving Place.

Q. What work do you do? A. I am in the distribution engineering bureau of the electrical engineering department and my work concerns the Manhattan distribution, secondary work, laying out of services, electrical services.

Q. Are you a member of any labor organization?

A. Yes, I am a member of the Independent Gas and Electric Union.

Q. When did you become a member of it? A. The precise date I could not say, I should say about the middle of May.

Q. 1937? A. Yes, sir.

Q. Before that, were you a member of the E.R.P.?

A. What is that?

Q. The Employees Representation Plan? A. Yes.

Q. Did you hold any office in it? A. Not this year but the first year it came into being I was a bureau councilman, chairman. 3416

Q. You are familiar with the fact that on or about April 19, 1937, there appeared a public announcement

S. M. 1353.

that Mr. Carlisle had recognized the I.B.E.W.? A. Yes, sir.

Q. After that statement was made do you know whether or not any of the supervisory employees in your department were engaged in the circularization of I.B.E.W. application cards? A. Yes, sir. 3417

Q. Do you recall when? A. Well, for about three days following that announcement there were I.B.E.W. professional organizers in the office in which I am employed on the 7th floor.

Q. Do you know their names? A. Sir?

Q. Do you recall their names? A. No, sir.

Q. How did you know they were professional organizers? A. Well, they said they were, there was no question about it, they came in and were given desk space there with several vacant desks so no one had to relinquish his desk for them, there was one man for two days and then I think two men for the third day and

3418

Franklin De Lude—For N.L.R.B.—Direct

following that, I might say that there was no success in getting members for the I.B.E.W., using those methods, so those organizers were withdrawn and cards were distributed, the yellow I.B.E.W. membership cards were distributed by men in supervisory positions.

Judge Ransom: I move to strike out the state-

S. M. 1354

ment as wholly in the nature of a conclusion, the men are not identified.

3419

Trial Examiner Gates: It may be stricken unless the names are given and indications of duties.

Mr. Moscovitz: You are referring to the names of the men referred to by this witness as professional organizers, or the supervisory employees.

Judge Ransom: Supervisory positions.

Mr. Moscovitz: Yes, sir.

Q. (By Mr. Moscovitz) Who are the supervisory employees? A. Mr. M. Herman.

Q. What is his job? A. He is an assistant engineer, he is unassigned on the chart, the organization chart, but he is in a supervisory capacity.

3420

Q. Why do you say that? A. Well, I know.

Q. Does he have any men under him? A. Yes, sir. He is; I should say the second in line in that bureau.

Q. How many men are under him? A. Well, I would have to guess, I couldn't say.

Q. Well, what is your best approximation? A. Well, there were 200 men in the bureau, whether it could be said they came definitely under him, I can't state.

S. M. 1355

Q. But he is— A. He is in a senior position, perhaps second in line in that bureau.

Q. I see. Who are the others? A. You mean in distributing the cards?

Q. Yes, the supervisory? A. Mr. J. O'Dyer, he had the title of assistant engineer. I don't know the rest of his title, and he gave out cards and instructed his men that it was what the company wanted and added certain impetus to the movement. Following that—shall I continue or do you wish to ask another question?

Q. Go right ahead. A. The mere distribution of cards convinced a certain number of the more timid—

Judge Ransom: I move to strike that statement out as purely argumentative and conclusory.

3422

Mr. Moscovitz: Well, I will withdraw—I have nothing to withdraw, but let me ask you some questions.

Trial Examiner Gates: Well—

Judge Ransom: It is stricken.

Trial Examiner Gates: It may be stricken.

Mr. Moscovitz: Yes.

Q. (By Mr. Moscovitz) You saw these men distributing these cards, is that right? A. Yes, sir.

Q. You also saw these men whom you refer to as

3423

S. M. 1356

professional organizers? A. Yes.

Q. At the desks? A. That's right.

Q. Distributing the cards? A. No, sir, they just came in and sat there and spoke with a few men at a time, the first day after Mr. Carlisle's announcement there were perhaps 40 or 50 people gathered around this one organizer on company time, that is during working hours for perhaps half an hour or so at a time. The crowd would keep disbursing and gathering again as new people came in.

3424

Franklin De Lude—For N.L.R.B.—Direct

Q. How long did this continue, would you say, three days? A. I estimate it would be three days.

Q. And who would these men get to the desks; would they be called over, that is, how would they get there, would they be called by the organizers or would they be sent to the organizers? A. They weren't sent over, considering the things that were happening, people just gravitated to them.

3425

Q. And was all this done in the presence of foremen or supervisory employees? A. In the presence, you mean, were they present in the room?

Q. Yes, A. Who?

Q. Well, all the men in the supervisory position in the room?

S. M. 1357

Judge Ransom: I move to strike this out, the persons are wholly unidentified.

Examiner Gates: Did you give your answer?

3426

The Witness: No, sir, I can easily identify them. I will have to say that in this room there are bureaus of two departments, and in the one department the man in supervisory positions would be Mr. R. Amson.

Q. (By Mr. Moscovitz) Give the titles if you know them? A. Mr. Amson is supervisor of the bureau, his actual title may be division engineer, I wouldn't swear to it, and Mr. Herman whom I mentioned before, Mr. T. F. Ryan, and well, that is really the top supervisory positions, the others are under them. That is, in one department. And in the other department in the same room Mr. A. R. Gruer and perhaps ten men in supervisory positions under him whom I can name if you wish me to, merely that they are present, that is all I am talking about.

Franklin De Lude—For N.L.R.B.—Direct

3427

Q. That is right. A. Mr. J. Lueillis, Mr. Fuller, C. J. Barker, A. J. Bison, is that enough?

Q. That is enough. A. I am merely certifying their presence.

Trial Examiner Gates: Motion to strike is denied.

Judge Ransom: Exception.

Mr. Moscovitz: Sir?

S. M. 1358

3428

Trial Examiner Gates: The motion to strike previously made is still on the record, it is denied.

Mr. Moscovitz: I see.

Q. (By Mr. Moscovitz) Did you at any time object to this distribution of cards or intervene when cards were being distributed to any of the employees in the department by supervisory employees? A. No, I never objected to the passing out of cards, it came too early after developments for me to know just what I could do and could not do.

Q. Did you ever intervene when cards were being distributed? Or when these conferences were being held by supervisory employees and other employees? A. Yes, I did.

3429

Q. Do you recall when that was? A. Well, the most specific case I can mention was on May 19th.

Q. This year? A. Yes, sir, of this year.

Q. Yes. A. The reason I place the date is that it was the same day that endeavored to have coercion stopped in the department.

Judge Ransom: I move to strike out the witness' conclusion about what he endeavored to have stopped.

Franklin De Lude—For N.L.R.B.—Direct

Trial Examiner Gates: It may be stricken unless he states what he did and what was said.

S. M. 1359

The Witness: Well, I can answer that easily, I had become acquainted with other gentlemen who were endeavoring to form an independent union to combat this I.B.E.W. business and I personally was working and could not take steps to see the supervisor or superintendent.

I did speak to Mr. Harry Crowell, with whom I had become associated, and requested that he speak to Mr. Schofield, L. A. Schofield, general superintendent in the department of service inspection and records and I told him that the men in that department were being subjected to a more intense coercion than I knew of elsewhere and requested that he see Mr. Schofield, which he did.

On May 19th, in the morning, he called me and informed me also in the morning that he had spoken to Mr. Schofield.

Judge Ransom: I object to this. This is purely hearsay.

Mr. Crowell has been a witness. I move to strike out the whole statement of the witness relative to his conversations with Crowell or any report of anything that Mr. Crowell made to the witness.

Trial Examiner Gates: The record may so far stand.

Judge Ransom: Exception.

The Witness: Shall I continue?

Mr. Moscovitz: Yes.

A. He informed me that he had had conversations with

S. M. 1360

Mr. Schofield on the subject and Mr. Schofield had informed him that men under him were not supposed to be circularizing, endeavoring to secure I.B.E.W. membership, but that they had given cards so that men could join in the event that they wanted to. That was the morning of May 19th. In the afternoon of May 19th, I went into another room which also housed part of the same department on the same floor and there I saw Mr. J. O'Dwyer.

Q. Who was Mr. J. O'Dwyer? A. He is assistant engineer in a supervisory position.

3434

Q. What is he in charge of?

Judge Ransom: He is the same man he has testified before.

The Witness: I don't know, but I don't recall. I did know. It may be material to the schedules, it may not.

Q. (By Mr. Moscovitz) Is he in charge of the schedules group? A. Yes, sir, that would be it.

Q. Yes. A. And then it was—

Q. What was he doing when you saw him? A. Mr. Kurt P. Damm, an employee, he was endeavoring to convince him that the I.B.E.W. was the correct thing to join.

3435

Judge Ransom: I move to strike out the witness' statement as purely argumentative and a conclusion.

Trial Examiner Gates: Did you hear the conversation?

The Witness: Yes, sir.

S. M. 1361

Trial Examiner Gates: It may stand.

Franklin De Lude—For N.L.R.B.—Direct

Judge Ransom: Exception.

The Witness: I stood behind the gentleman until I heard a few sentences to be certain.

Q. (By Mr. Moscovitz) What did he say, what was he saying? A. Well, I could not give you his precise words before I spoke, but I can give you the substance of the conversation that I had with him.

Q. Well, what did you hear him say that made you have a conversation with him? A. He was definitely endeavoring to convince this man to join the I.B.E.W.

Q. Well, what did you do? A. I intervened, and I told him he was not supposed to be doing that and that Mr. Schofield had said that morning that there would be no more pushing the I.B.E.W. and I suggested that he call Mr. Schofield. He responded by saying that it was none of my business. He did not have to take orders from me, he said.

I said, "No, you certainly don't have to take orders from me, but I do suggest that you call Mr. Schofield and get the correct orders from him."

And then he said, "You mind your own business as I am minding mine."

And I said that that was not exactly minding his own

S. M. 1362

business and he said, "Well, I am taking orders from Mr. Schofield, in this case, not from you."

And then I said, "I don't think you meant to tell me that, but you better call Mr. Schofield," and that concludes that conversation. I may say this is not memory exactly because I wrote down the subject of that conversation immediately following.

Q. Do you know Mr. Herman? A. Sir?

Q. Do you know Mr. Herman? A. Yes, sir.

Q. Who is he? A. Mr. M. Herman?

Q. Is it M. Herman? A. M. Herman, yes, sir.

Q. Yes. A. Yes, he is the assistant engineer with no assigned duties on the organization chart for that department.

Q. When you say "no assigned duties on the organization chart" what does that mean? A. Well, not so long ago there was a departmental split up in which what was formerly the distribution engineering department became in part the department of service inspection and records under Mr. L. A. Schofield and in part the electrical engineering department under Mr. Fair-

3440

S. M. 1363

man, so I am not familiar with every man's duty, because that split was fairly recent.

Q. Well, is he what you would call a supervisory employee? A. Yes he is without question.

Q. And why do you call him that? A. Well, his duties are all of a supervisory nature.

Q. I see. Does he have men working under him? A. Yes, sir.

Q. And whose work he directs? A. Yes, sir.

3441

Q. Do you know approximately how many he has under him? A. Well, I stated earlier that I could not put a definite number but I presume it would be around 200, I further stated that I could not definitely say that they were under him directly.

Q. All right, now he is the man to whom you have already referred as distributing cards after the professional organizers were through, is that right? A. Yes, sir, and if you care to I can give you the substance of the conversation I had with him on the first day.

Q. What was it? A. Well, he was passing my desk and I asked if he would stop a moment and he had

3442

Franklin De Lude—For N.L.R.B.—Direct

earlier brought up some cards and given a pile to Mr. Barker and to Mr. O'Dwyer, and these gentlemen had circulated the cards. I asked Mr. Herman why he

S. M. 1364

brought the cards up and his answer was, which I will presently state, in substance, it was most evasive.

Judge Ransom: I move to strike out the witness' answer, or summation, characterization, the witness should state what the answers were.

3443

Trial Examiner Gates: Yes, it will be stricken.

Q. (By Mr. Moscovitz) What did he say? A. Well, he said, out of the goodness of his heart he picked them up from a desk on the 6th floor and brought them up to give to people in case they wanted them.

Q. What did you say to that? A. Sir?

Q. What did you say to that? A. Well, I naturally laughed, ridiculed it.

Q. What did he say? A. Well, he accepted the ridicule and bowed out as well as he could and by that time several people had collected around him.

3444

Q. Did you notice whether or not any of the former members of the department council of the E.R.P. were engaged in the distribution of these cards? A. I know definitely that they were.

Q. Who was the chairman? A. The chairman?

S. M. 1365

Q. Of the formerly departmental council? A. A Mr. E. Flannagan.

Q. And where is he located? A. He is on the 6th floor.

Q. What work does he do? A. You mean his position?

Q. Yes. A. Why, I frankly don't know, along clerical lines in the department of service inspection.

Q. You don't know whether or not he was distributing these cards during his working hours? A. I do not know that he was definitely distributing cards during working hours, but I do know that he was most certainly signing up members during working hours.

Q. Did you see him do it? A. Yes.

Q. Where? A. What?

Q. Where? A. In the room on the 6th and 7th floor.

Q. How many days did you see him engaged in that activity? A. I can only say that it stretched over a period of time which I might estimate at two weeks.

3446

Q. Yes. A. Yes.

Q. And during that two weeks period did you talk

S. M. 1366

with him? A. Yes.

Q. About this activity? A. I did.

Q. What conversation did you have with him? A. Well, he told me the one time that he had been transferred from the payroll of the Consolidated Edison Company to the payroll of the I.B.E.W. and I said if that is the case why are you working on company property during the working hours of the men here? And he assured me that it was quite all right, that he was doing that.

3447

Q. Is he still employed by the company? A. I understand that he has been restored to the payroll of the Consolidated Edison.

Q. So he is still around? A. Yes.

Q. When you say you understand that he has been restored to the payroll of the Consolidated Edison Company— A. I have been told that.

Q. I see. Do you know when he was restored?

Judge Ransom: I object and move to strike

3448

Franklin De Lude—For N.L.R.B.—Direct

out the previous answer as purely hearsay and in no way evidence—

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Do you know when it was

S. M. 1367

that he was restored? A. No, I cannot give you such a date.

3449

Q. By whom were you told? A. I don't recall.

Q. Has this activity to which you have referred continued, to your knowledge? A. Well, not to such an extent as it prevailed originally, for the simple reason—

Judge Ransom: I move to strike out his statement of reasons, whether they are simple or not.

Trial Examiner Gates: It may be stricken.

A. For the reason that their endeavors in the beginning were quite successful in securing a majority of members in the I.B.E.W.

3450

Q. (By Mr. Moscovitz) When you say "their" endeavors, who are you referring to? A. The endeavors of any individuals who were working along those lines.

Q. Supervisory employees and others—

Judge Ransom: I object to such leading of the witness.

Trial Examiner Gates: Objection sustained.

Mr. Moscovitz: Well, I think probably the record will speak for itself.

Judge Ransom: I hope so.

Q. (By Mr. Moscovitz) You are still a member of

S. M. 1368

the gas workers Union; is that right? A. Independent Gas and Electric Union.

Franklin De Lude—For N.L.R.B.—Cross

Q. Yes. A. Yes.

Mr. Moscovitz: That's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) When did you become a member of that union? A. I said I presumed it was about the middle of May. I don't remember the exact date.

Q. You were opposed to any outside or international union among the employees? A. I was opposed to the manner in which an outside union was brought in. 3452

Q. Well, were you in favor of an outside union or opposed to it? A. I am opposed to an outside union in the Consolidated Edison Corporation for reasons which I will bring forth if you care to hear them.

Q. What are those reasons?

Mr. Moscovitz: I don't see, Mr. Examiner, that it is either important or relevant or in any way necessary for the proper consideration of the issues here that this witness give his views on why he is not concerned about outside affiliation.

Judge Ransom: I think I am entitled to de- 3453

S. M. 1369

velop the point of view and the animus of this witness on matters on which he has testified.

Mr. Moscovitz: I think it would be more important to have the point of view of the company as to why they want an outside union rather than the testimony of this witness on his own views.

Judge Ransom: The company did not enact the Doyle-Neustein Bill.

S. M. 1370

° Trial Examiner Gates: He may continue.

3454

*Franklin De Lude—For N.L.R.B.—Cross***Mr. Moscovitz: Exception.**

3455

A. I feel that an organization of 40,000 people need not necessarily be governed by an outside organization. I feel that such a body of people can form from their own ranks exclusively a collective bargaining organization which would be equally effective as an outside union. The idea that 40,000 people should be governed by outsiders, I consider wholly ridiculous. An independent union would provide government of the employees for their own benefits, suited to their peculiar needs, would have no interference from national organization headquarters, which must be sustained and rather expensively, to the extent of some quarter of a million dollars a year.

I feel that such payment constitutes nothing but tribute, and while I admit the effectiveness of international organization in other fields, I feel that the Consolidated Edison Company has rather peculiar problems and there is not enough to be done to warrant bringing in an outside organization. Will that suffice?

Q. And at all times you have testified about, your actions have been in pursuance of that point of view?

3456

A. Yes, sir.

Q. And those are still your views? A. Yes, they are.

S. M. 1371

Q. Do you object to having the I.B.E.W. bargain collectively for such employees as are members of its locals?

Mr. Moscovitz: Mr. Examiner, what difference does it make as to whether or not this particular individual, who is one of 40,000, has a philosophy which is inconsistent or consistent with representation of certain employees by an outside organization?

Judge Ransom: I am entitled to show the point of view and animus on which the witness testified.

A. Would you repeat the question?

Q. (By Mr. Ransom) I will restate it. Do you object to having the I.B.E.W. bargain collectively for such of the employees of the Consolidated Edison Company as are members of the I.B.E.W.? A. I would not object to having such a body bargain for those members who voluntarily joined it. I most certainly would object to their representing a group who were coerced and intimidated into their ranks against their will.

Q. And so far as I.B.E.W. represents persons who have joined voluntarily, you have no objection to this as a collective bargaining agency? A. To that limited group, no.

Q. Now, your department is now called what? A. Electrical Engineering Department.

Q. And as of what date did this reorganization or

S. M. 1372

set-up which you speak of take place? A. That I cannot say.

Q. Well, can you give the month? A. No, I cannot. Perhaps Mr. Rowe can.

Q. Was it this year? A. I believe it was this year.

Q. Well— A. Early this year.

Q. By that you mean in February or March? A. Well, I have already stated that I cannot give a time, sir, and I cannot enlarge on that.

Q. Was it before? A. Yes, and it may have been last Fall.

Q. The men whom you referred to as professional organizers, who were seated at vacant desks in your room,—do you know whether they were or had been employees of the company? A. I do not know that.

3460

Franklin De Lude—For N.L.R.B.—Cross

Q. And you cannot give any of their names? A. No, sir, I can merely say that—

Q. Can you give any of their names? A. No.

Q. Do you know whether they were or were not members of the I.B.E.W.? You either know or you don't. You can state that without argument, I assume? A. Well, I don't know that they were members.

S. M. 1373

3461

Q. That is the answer. Now, how large was this room your bureau is in? A. It is—it extends about two-thirds of the distance from Irving Place to Third Avenue, which I would estimate at 400 feet, that is the main portion of it, and then it also extends north on Irving Place for perhaps 150 or 200 feet. The width varies, and I should say perhaps it was an average of perhaps 150 feet in width. It is a very large room.

Q. What are the two bureaus in that room? A. I said members of two departments are in the room. The two departments are service inspection records and the electrical and engineering department.

3462

Q. This is on what floor? A. The seventh floor, new building. All my testimony did not concern that room.

Q. Mr. Dwyer— A. Mr. O'Dwyer—you—

Q. O'Dwyer—do you know whether he was and is a member of the I.B.E.W.? I am asking you whether you know. A. Well, I will have to qualify my answer.

Q. Well, you either know or you don't know. A. I don't know.

Q. Mr. M. Herman, do you know whether he is or is not a member of the I.B.E.W.?

S. M. 1374

The Witness: Sir, may I qualify my answer on that? It is necessary.

Judge Ransom: I ask the witness to answer whether he knows.

A. Well, there is an element there that has to be mentioned.

Trial Examiner Gates: You may answer the question as put.

Q. (By Mr. Ransom) You may want to give some argument in support of your answer.

A. No, I don't—

Trial Examiner Gates: Just a moment. Answer the question as put.

A. The question cannot be answered yes or no. It must be explained.

Q. (By Mr. Ransom) You spoke of Mr. Fuller, Mr. Barker and Mr. Ellis. A. That is Mr. de Lelis.

Q. What? A. I said de Lelis.

Q. Well, then, Mr. de Lelis. Do you know whether they are members, were and are members of the I.B.E.W.? A. The same answer pertains to that that I gave before. I don't see why I cannot state it. It is very simple and would clarify this considerably.

Mr. Moscovitz: You answer Judge Ransom's

S. M. 1375

questions and then we will see if we cannot clarify it after he is finished.

The Witness: The questions, sir, are pointless.

Q. (By Mr. Ransom) Are you an engineer? A. No, sir.

Q. What are you? A. What am I? I am doing the work of an engineering assistant. I have certain—

3466

Franklin De Lude—For N.L.R.B.—Cross

Q. What is your title? A. Engineering assistant, first grade.

Q. And in your opinion, it is pointless if I ask you whether you know whether a man is or is not a member of the I.B.E.W.? A. Not a man—certain individuals.

Q. Well, individuals. A. I will gladly answer if you will allow me to clarify it.

Q. What argument do you want to make about it? A. None whatsoever, merely to say—

3467

Q. Do you know—let's take Mr. O'Dwyer. Do you know— A. They are considered in supervisory positions and ineligible to join.

Q. I ask you if you knew whether he was or was not a member. Do you say he is not a member? A. They are not members because they feel they are beyond the membership.

Judge Ransom: I move to strike out the

S. M. 1376

witness' argument on the matter. I am asking him simply for his knowledge.

3468

Trial Examiner Gates: It may stand, but I will ask you to answer it.

A. I don't know if any of these gentlemen in supervisory positions belong to the I.B.E.W.

Q. (By Mr. Ransom) That applies to all the men I have asked you about? A. All the men in supervisory positions.

Q. And you don't want to answer any more frankly? A. Sir?

Q. You don't wish to answer the question any more definitely? A. You said "frankly."

Q. Yes. A. I am endeavoring to be frank. You don't allow me to.

Q. Well, now, has Mr. O'Dwyer ever told you whether he was a member or not? He has? Yes or no.

A. No, he has not.

Q. And has Mr. Herman ever told you whether he was a member or not? A. No, he has not.

Q. And has Mr. Fuller or Mr. Barker ever told you whether they were members or not? A. Mr. Fuller is definitely not a member, and may I make a correction on the previous statement, if you please? Mr. Fuller may not have been present when this original union

S. M. 1377

activity developed. I believe he might have been on jury duty at that time.

Q. You didn't suggest that any of these men were taking any part in what you described as activity. A. Well, when I named them I merely certified to their presence.

Q. They were in the room? A. They were in the room. I didn't say—

Q. As far as you observed, they were going about their work? A. By no means. They would have to be qualified individually along those lines. Certain of them were going about their work and certain of them were not.

Q. How about Mr. Fuller? Was he in the room? A. Mr. Fuller is my own personal superior and is very much against the I.B.E.W. and would not join himself. He informed his own superior that neither he nor the men that worked for him had any intention of joining the I.B.E.W.—

Judge Ransom: I move to strike out the witness's entire volunteered argument. I asked him a simple question, calling for a yes or no answer,

3472

Franklin De Lude—For N.L.R.B.—Cross

and the witness wants to make a speech about it. I move to strike. I asked him whether Mr. Fuller was in the room. He either was or was not. It has nothing to do with the witness's elaborate argument.

Trial Examiner Gates: Read the answer.
(Answer read.)

S. M. 1373

3473

Trial Examiner Gates: The answer may be stricken.

Q. (By Mr. Bansom) I ask you, if you can answer without argument, was Mr. Fuller in the room? A. I stated not so long ago, sir, that Mr. Fuller may have been on jury duty. I couldn't definitely say that he was in the room. I mentioned it as a possible correction.

Q. Mr. Barker—was he in the room? A. Yes.

Q. Was he at his desk in the room? A. Yes.

Q. And Mr. de Lelis, was he in the room? A. Mr. de Lelis?

Q. De Lelis? A. I couldn't guarantee his presence. Normally, he would be there. He was certainly, some of the time.

3474

Q. Engaged in his usual work? A. Which one?

Q. Mr. de Lelis? A. Yes, engaged in his usual work.

Q. I think that concludes three of the about ten men you mentioned. A. Concludes?

Q. Three of the ten, you said there were ten men who had some supervisory duties who were in the room. Were they at their desks in the various parts of the

S. M. 1379

room? A. I could not say definitely whether they were at their desks or not. Their normal duties would have them in the room at least some of the time.

Q. Who is Mr. T. F. Ryan? You mentioned his name.

A. I believe his title is assistant divisional engineer. He is in the department of service inspection of records and personally over a considerable group, perhaps.

Q. Do you have personal knowledge of whether he is or is not a member of the I.B.E.W.? A. He couldn't be a member of the I.B.E.W.

Q. I am just asking you whether you knew, have you any personal knowledge whether he is or not? A. No, sir.

Q. You mentioned Mr. Flanagan; do you know 3476 whether he is and was a member of the I.B.E.W.? A. Yes, sir, he was; he is a member of their executive board, I believe, of Local 829, I believe.

Judge Ransom: That's all.

REDIRECT EXAMINATION:

Q. (By Mr. Moscovitz) These supervisory employees that you and Judge Ransom have just been talking about, you have testified that you don't know whether they are members of the I.B.E.W., is that right?

Judge Ransom: I object to the question unless 3477 it is related to specific men, it is purely a characterization as it stands.

S. M. 1380

Mr. Moscovitz: Well, the gentlemen known as Mr. O'Dwyer, Mr. Herman, Mr. Fuller, you might except Mr. Fuller for the time being, well, Mr. Fuller, Mr. Barker, and Mr. Flanagan?

The Witness: Well, that is not in the list of supervisory positions.

Q. (By Mr. Moscovitz) They are not? A. Not Mr. Flanagan.

3478

Franklin De Lude—For N.L.R.B.—Redirect

Q. The others are? A. Yes.

Q. You have testified these persons are not members of the I.B.E.W., is that right?

Judge Ransom: I object to that, that is an inaccurate statement, he said he didn't know.

Q. (By Mr. Moscovitz) You don't know whether they are members of the I.B.E.W., isn't that right, that has been your testimony so far? A. That has been my testimony.

3479

Judge Ransom: Just a moment. I will let you resume your argument in a moment.

The Witness: Pardon me.

Judge Ransom: I object to that on the ground that all the witness has attempted to do in his testimony is to argue his interpretation of the constitution and the by-laws of the labor organi-

S. M. 1381

3480

zation to which he does not belong and to which he says he is violently against. Now, the question of whether these men are eligible is surely not a question for this witness to settle on the stand, and he says he does not know whether in fact they are or are not members and, of course, even less can he know whether they are eligible for membership, it might have been enough for him to interpret the constitution and by-laws of his own labor organization.

Trial Examiner Gates: Has the question been finished?

Mr. Moscovitz: I just thought it was summing up things here for Judge Ransom and the witness.

Judge Ransom: Well, the witness is summing them up, you shouldn't interrupt.

Trial Examiner Gates: The question may be answered.

The Witness: What was the question?

(Reporter repeated the pending question, as follows:

“Q. You have testified these persons are not members of the I.B.E.W., is that right?”)

The Witness: That is only right in one sense, I said I knew Mr. Fuller was not a member of the I.B.E.W.

3482

Q. (By Mr. Moscovitz) As far as the rest of them are concerned, you just don't know, is that right? **A.** That has been the gist of my testimony up to now.

Q. Yes, but you would like to qualify that? **A.** I certainly would.

S. M. 1382

Q. Now, in what respects—

Judge Ransom: I object to the witness attempting to interpret the constitution of the I.B.E.W., which he does not belong to and to which he violently objects.

3483

Trial Examiner Gates: I suggest that the qualification be gotten by the question and the answer, the objection is overruled.

Judge Ransom: Exception.

The Witness: I am not attempting to interpret any constitution.

Trial Examiner Gates: Just a moment, please. Answer the question.

The Witness: These gentlemen are presumed to be ineligible for membership because they held positions of a supervisory nature.

3484

Franklin De Lude—For N.L.R.B.—Redirect

Judge Ransom: I object to the witness's conclusion of law and move to strike out his answer as wholly argumentative and self-serving, and merely a conclusion.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

3485

Q. (By Mr. Moscovitz) Now, you don't—strike that out. Judge Ransom has developed what turned out to be a very interesting philosophy of your conception of this labor problem. Now, you don't object, do you, to men becoming members of any labor organizations that

S. M. 1383

they want to become members of, do you? A. No, sir.

Q. Whether it is the I.B.E.W. or C.I.O. or the X.Y.Z. or anything else, is that right? A. If they consider it intelligently, I should think they would be allowed to join the one they wish to join.

Q. Your objection is only to the company forcing these men into an organization that the company is desirous of having them become a part of, is that right?

A. That is correct.

3486

Q. And that is why you registered disapproval when you intervened in the conversation between an employee and a supervisory employee about which you have already testified? A. That is correct.

Q. And that is why you object to the supervisory employees circulating and distributing I.B.E.W. cards on company time? A. Yes, sir.

Q. On company property, isn't that so? A. That is correct, or I may add any other employee.

Mr. Moscovitz: All right, that is all.

Judge Ransom: That is all.

(Witness excused.)

William Chandley—For N.L.R.B.—Direct

Mr. Moscovitz: There is some difficulty about a witness I would like to put on, may we adjourn now until 1:30?

¶ Trial Examiner Gates: We will take an adjournment until 1:30.

S. M. 1384

(Whereupon, a recess was taken at 12:20 o'clock p.m. until 1:30 o'clock of the same date.)

3488

AFTERNOON SESSION

Trial Examiner Gates: Proceed.

Mr. Moscovitz: I will call Mr. Chandley.

WILLIAM CHANDLEY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live, Mr. Chandley? A. 72 Hick St., Brooklyn.

Q. You are employed by the Consolidated Edison Company? A. I beg your pardon, sir?

Q. You are employed at the present time? A. Consolidated Edison Company.

Q. What kind of work are you doing?

Judge Ransom: Is it Brooklyn Edison?

Q. (By Mr. Moscovitz) Are you employed by the Brooklyn Edison? A. Yes, Brooklyn Edison.

Q. How long have you worked for the company? A. Eleven years July 2nd, 11 years on May 2nd, I should say.

Q. What kind of work are you doing? A. Janitor.

3489

3490

William Chandley—For N.L.R.B.—Direct

S. M. 1385

Q. Is that what you have been doing all those years for the company? A. Yes, with the exception of about six or seven months I have been meter reading.

Q. You have been meter reading the last six or seven months? A. I couldn't remember the year exactly, sir, but about seven months meter reading; otherwise I was janitor all the time.

Q. That is what you are doing now? A. That's what I am doing now.

3491

Q. All right, are you a member of any labor organization at the present time? A. American Federation of Labor.

Q. Yes, is that the International Brotherhood of Electrical Workers? A. Yes, sir.

Q. Are you sure? A. Yes, sir.

Q. All right. A. I.B.E.W.

Q. I.B.E.W.? A. Yes.

Q. That's right, and what local do you belong to? A. I have so little interest in it I don't even know the name.

S. M. 1386

3492

of the local, I am in it and that is all and I don't care. I just pay my dues, I don't believe in any unions so far as that goes.

Q. I see, well, if you don't believe in any I.B.E.W., how do you come to be a member of it? A. Well, I just signed it, just as a matter of cooperating with the company.

Q. To cooperate with the company? A. Cooperate, yes.

Q. Tell us how you cooperated with the company by joining. A. Well, I was asked over to the office, to the superintendent's office.

Q. Where was that? A. That was the office.

William Chandley—For N.L.R.B.—Direct

3493

Q. Well, when was that? A. Several months ago, two or three months ago, a couple of months ago.

Q. April, 1937, would you say, or in May? A. I guess that's it, I forget now the date.

Q. April or May, can you be a little more specific? A. I can say April.

Q. About April of 1937? A. Yes.

Q. Would you say the latter part of April? A. Yes.

S. M. 1387

Q. Or the first part? A. The latter part.

3494

Q. The latter part? A. Yes, sir.

Q. At whose office was it that you were called to?

A. The superintendent's office.

Q. What is his name? A. Henderson.

Q. Henderson? A. Mr. Henderson.

Q. Is he your superintendent? A. Yes, sir.

Q. What took place when you went over there? A. He just asked if I would join and I said that I had not, he asked if I had joined—

Q. He asked if you had joined? A. Yes.

Judge Ransom: He ought to tell who he had the talk with.

3495

Q. (By Mr. Moscovitz) Who were you talking with?

A. With the superintendent.

Q. With the superintendent? A. Yes, and the foreman sent me over to the superintendent.

Q. Who was the foreman that sent you over? A. Mr. Collins, John Collins.

S. M. 1388

Q. What did the superintendent say to you after you got there? A. Well, he just looked at my card and said

3496

William Chandley—For N.L.R.B.—Direct

I had not joined and I said, "No, I didn't believe in unions, and that stuff," so he advised me, well, he said if he was me he would join the American Federation of Labor, that was as far as he went.

Q. And did you join? A. I joined, sir.

Q. Did he give you the card? A. The card was signed anyhow, so I signed the card.

Q. He gave you the card, did he, to sign? A. I had a card with me but he gave me a clean one, I put it in my pocket.

3497 Q. Well, you had had a dirty card in your pocket and he gave you one to sign? A. Yes.

Q. And you had been carrying around this card for a few days? A. Yes, then he gave me a clean one, so the superintendent gave me the card that was signed, and he gave me the new one in lieu of the dirty one.

Q. Then you signed it? A. Yes, sir.

Q. You gave it to him, did you? A. Yes, sir.

S. M. 1389

Q. Did you pay him your dues, too? A. I never paid my dues to him.

3498 Q. Whom did you pay your dues to? A. To the fellow that came along for it.

Q. How—do you know who it was? A. He is not one of the cleaners now, sir.

Q. He used to be a window cleaner, did he? A. The place is so big, I didn't see him. I knew he was a window cleaner, but I don't know if he is a window cleaner now.

Q. He came for the dues? A. The dues.

Q. What is he now? A. I suppose he is a window cleaner still. I don't know, I couldn't say for sure, sir.

Q. When was it that he came to you first, was it a few days after you had spoken with your superin-

tendent? A. Oh, he came two or three times, but I just paid him the last time he came. He came about three times, and the last time were the first dues I paid him.

Q. And you paid your dues to cooperate with the company, is that right? A. I imagine—

Q. Did you say you imagined that they want you to do so? Is that what you said? A. They seemed to be

S. M. 1390

in favor of it, sir, of our joining it. They don't say it to you, you know, not in that way, but that is the thought. I didn't want to join the C.I.O. or anything else. I didn't care for the C.I.O. or any union, as far as I am concerned.

3500

Q. You didn't want to belong to the C.I.O. or the I.B.E.W.; is that right? A. I did not want to belong to any of them, sir.

Q. If your superintendent had not given you a card to sign, you would not have joined? A. I wouldn't have been in any of them.

Q. That is all.

CROSS EXAMINATION:

Q. (By Mr. Ransom) Where do you work? A. Johnson St.

3501

Q. Is it Johnson St. Building? A. 55 Johnson St.

Q. Is that one of the buildings of the Brooklyn Edison Company? A. Yes, sir.

Q. And what kind of a building is it? A. It is a research bureau as far as I can make out, engineering work, electrical engineering, and so on.

Q. How many janitors are there there? A. Three janitors and a foreman, sir, through the day, the day

S. M. 1391

time, and there is a night force on.

3502

William Chandley—For N.L.R.B.—Cross

Q. Now, Mr. Henderson you say is foreman of the janitors or superintendent of the janitors? A. Superintendent.

Q. Where is his office? A. 380 Pearl St., sir, 380 Pearl St.

Q. And who is Mr. Collins? A. He is just a foreman, sir.

Q. A foreman of janitors? A. Foreman, yes, sir.

Q. Where does he work? A. He works in Johnson St., sir.

3503

Q. He is the head janitor in your building? A. Yes, sir.

Q. Day times? A. Day times, yes, sir.

Q. Does Mr. Collins belong to the I.B.E.W.; do you know? A. I don't know what he belongs to, sir.

Q. What is the name of this window cleaner who you say came for dues; do you know? A. What was that, sir?

Q. The name of the window cleaner that came for dues? A. I couldn't say, sir. Edward—I forget his name now, sir.

S. M. 1392

3504

Q. Does he belong to the I.B.E.W.? A. I don't know, sir.

Q. You don't know? A. No, sir.

Q. Who gave you the first card you had for the I.B.E.W.? A. (No response.)

Q. Well, if you don't remember, never mind. Well, the one you signed is the one you say Mr. Henderson gave you? A. Yes, sir. Mr. Hazzard, I think. I think Mr. Hazzard.

Q. Who is he? A. I think that was the fellow who gave it to me.

Q. Does he work in Johnson Street? A. Yes.

William F. O'Brien—For N.L.R.B.—Direct

3505

Q. His name was what? A. Hazzard.

Q. What? A. His name was Hazzard. He gave me the first one.

Q. That's all.

Mr. Moscovitz: Thank you very much.
You need not wait any longer.

(Witness excused.)

Mr. Moscovitz: I will call Mr. O'Brien.

3506

WILLIAM F. O'BRIEN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

S. M. 1393

Q. (By Mr. Moscovitz) Where do you live? A. 10 West 96th St.

Q. New York City? A. New York City.

Q. By whom are you employed at the present time?

A. I am employed by the Consolidated Edison Company. 3507

Q. What kind of work? A. Clerical work in the accounting department.

Q. What? A. Clerical work in the accounting department.

Q. How long? A. Seven years.

Q. Are you a member of the C.I.O.? A. I am a member of the independent union.

Q. Oh, that is the independent? A. Yes, an electric union.

Q. How long have you been a member of that organization? A. I have been a member for about three months.

3508

William F. O'Brien—For N.L.R.B.—Direct

Q. Do you hold office in it? A. Yes, I do, I am a member of the executive committee.

Q. Are you a member of the E.R.P.? A. E.R.A. was the plan under which the company maintained the company union, the Edison Company before the merger, the E.R.P. was the Gas Union, I was a member of the E.R.A.

Q. E.R.A.? A. Yes.

S. M. 1394

3509

Q. That's the employee representation association?
A. That's right.

Q. Did you hold any office? A. I was the vice-chairman of the consumers' accounts council.

Q. Did you know Mr. William Ganley? A. I did, very well, yes, sir.

Q. Was he on the council with you? A. Mr. Ganley was on the general council, I was one of the lesser councils, I was on one of them.

Q. When you say you know very well, do you mean you used to work with him? A. Well, I mean I met him frequently down at the general council room and I know him from those meetings.

3510

Q. In your E.R.A. work? A. E.R.A. work, yes, sir.

Q. Do you know whether Mr. Ganley is still employed by the company? A. I don't know that for a fact, no, sir.

Q. Do you know whether or not while he was employed by the company he did any organizational work for the I.B.E.W.? A. Well, I do know while he was on the payroll of the company he maintained his office in the company union on the fourth floor, first, and about two or three weeks before the company announced, be-

S. M. 1395

fore Mr. Carlisle made his announcement of the recogni-

tion for the I.B.E.W., that the company union offices were moved and enlarged to enlarged quarters on the fourth floor and four phones were installed, and Mr. Ganley and members of the general council, after this had been done, were invited by Mr. Tracy to take part in the I.B.E.W. work, and at that time I could not tell whether Mr. Ganley was still being paid by the company or by the I.B.E.W., but I do know that he was on the twelfth floor doing organizational work, that is, speaking of the details, attending to the details, and who came in and was going out to the districts and reported to him with their cards and how much money they had collected.

3512

Q. That's for the I.B.E.W.? A. The I.B.E.W., he did that for several days, although I knew he was probably in the same status as he was when working for the company, but doing no routine duties, he was working in the company union.

Q. And what was the period of time when he was working in these enlarged offices that had more telephones and so on? A. I would say he was there at least four weeks.

Q. From what period to what period? A. I imagine it was about two weeks before Mr. Carlisle announced that he had recognized the I.B.E.W. and for about two or three weeks after that that Mr. Ganley maintained

3513

S. M. 1396

that, also, as I.B.E.W. headquarters.

Q. When was that, when did you last—strike that out. Does he still use that office? A. He does not.

Q. Who uses it now? A. I have no idea who uses it.

Q. Do you know when it was last used? A. So far as I know, about three days after the article about the independent union got into the New York Evening Sun, whatever date that was, I don't remember, I think about

3514

William F. O'Brien—For N.L.R.B.—Direct

three days after that article was in, the office was no longer generally used as headquarters for the I.B.E.W. or the old council which is now the I.B.E.W.

Q. You say that was two or three weeks after Mr. Carlisle's statement appeared? A. I imagine that's about it.

3515

Q. Do you know whether or not council members of the E.R.A. were engaged with Mr. Ganley in this work during the period of time that you have specified? A. I know very definitely they were, I know the two people most intimately concerned with me in council work was the chairman of the same council of which I was vice-chairman, Thomas McGray was released from his routine duties and he did organizational work, that is, he was, he and the gentleman named, James Anello, who

S. M. 1397

3516

was a meter reader and councilman on the company union, were both released from their routine duties, were given what is known as the meter room on the tenth floor, which the meter readers used, but these are gentlemen who were out in the field during the day, this room was empty in the day time, of course, these two men held council in this room and under the permission of their supervisors they invited small groups of employees to the 20th floor into this room.

Q. Who was their supervisor?

Judge Ransom: I move to strike out that statement, that is purely hearsay.

Trial Examiner Gates: It may stand, if he states the basis for his knowledge.

Q. (By Mr. Moscovitz) Who was the supervisor? A. Mr. O'Callahan.

Q. How do you know about this? A. Because I worked nights.

Q. Yes. A. And I go to work at four o'clock, and when this entire thing happened I spent my days from about nine o'clock in the morning to three o'clock in the afternoon, either visiting Mrs. Herrick and finding out what my rights were, or else getting as far as evidence goes, as much as I possibly could.

Q. So you saw this actually take place? A. I saw it

S. M. 1398

in 15th St.

Q. Tell us what else you saw.

3518

Judge Ransom: I move to strike out the statement. This witness is obviously testifying from general hearsay. He is not even located in the building.

Mr. Moscovitz: He just testified that he saw this.

The Witness: I saw this.

Judge Ransom: Where do you work?

The Witness: 147th St.

Judge Ransom: You have pretty good eyesight, haven't you?

The Witness: I was down at 15th Street every day from the day Mr. Carlisle made that statement. 3519

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) You say you worked nights?

A. Yes, I am not due in the company until four o'clock in the afternoon.

Q. And you were down in 15th St. before going to work? A. I was at 15th St. at nine o'clock every morning. I don't go to work until four o'clock in the afternoon.

3520

William F. O'Brien—For N.L.R.B.—Direct

Q. That is when you saw these things taking place?

A. I did.

Q. Tell us what else you saw. A. Both Mr. McGraham and Mr. Anello invited all groups into this room

S. M. 1399

and they asked them to join the I.B.E.W., and they presented the cause of the I.B.E.W., stating that the management had recognized this union and it would be advantageous for the employees to recognize it and to join this union. I was not called in myself, but I spoke to Mr. Anello when he was doing this and I asked him if it was fair, and he said: "Why be stupid?"

3521

Q. He said what? A. "Why be stupid?"

Q. Yes. What did you say to him then? A. I left him.

Q. Did you ever see any other supervisor—or did you see any supervisory employee in your own place of work engaged in this activity? A. Yes.

Q. When? A. Two or three days, probably after Mr. Carlisle made his statement in the paper, when there were meetings of the general council down at 15th St., which I attended on my own time, and the council was deciding what to do on Mr. Carlisle's precipitate action. I came down—

3522

Judge Ransom: I move to strike out the witness's characterization. He cannot know if it was precipitate or not.

Trial Examiner Bates: It may stand.

S. M. 1400

Judge Ransom: Exception.

A. I went back to my supervisor, Mr. Bott, and told him what information I had gotten downtown, as he was as

much in the dark as anybody else, and I warned him that we would probably take some definite action against the company's stand, that I didn't know just what we would do, but I advised him as a gentleman and because I respected him as my supervisor, to keep his nose clean. That was my expression. He told me I was being very foolish and very foolhardy.

About a day later, since there were no delegates in my supervisor's accounts bureau who were willing to do the work of the I.B.E.W., Mr. Bott found it necessary to press the lesser supervisors into organizational work—

3524

Judge Ransom: I move to strike out the witness's statement as wholly incompetent, merely conclusion, and hearsay.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

Q. (By Mr. Moscovitz) Mr. Lester Mayerhoff—who is he? A. He is a clerk in charge.

Q. How many clerks does he have under him? A. Mr. Bott probably has some two hundred odd employees under him.

Q. And when you say Mayerhoff is a clerk in charge,

3525

S. M. 1401

what do you mean by that? A. Well, he was a clerk in charge of a unit with twenty or thirty people in it, but his actual unofficial title was right-hand man to Mr. Bott. He did the most of Mr. Bott's arguments. Mr. Wesley Smith, who was not in Mr. Bott's department, but who works in the same building in a different department—

Q. What is his title? A. He is a supervisor.

Q. All right. A. Mr. Smith, a gentleman named Mr. Walter Jones, who works for Mr. Bott, who is a fore-

3526

William F. O'Brien—For N.L.R.B.—Direct

man of the meter readers, a man named Mr. Philip Weimer, who was an assistant supervisor.

Q. What were these men doing? A. These men were asked to go around on company time and visit each employee at his desk and suggest to them that they join the I.B.E.W. union. That was the practice of the first day.

Q. Did you see it done? A. I did.

Q. Yes. A. On the second day—

Q. Did you hear them ask any of the men to join it?

3527 A. I did, too.

S. M. 1402

Q. Yes. A. And on the second day, when it was fairly obvious because of our antagonism to the company's attitude in 147th St.—

Judge Ransom: I move to strike out what the witness argumentatively states was obvious as purely conclusion, and self-serving.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception.

3528

A. I spoke to Mr. Lester Mayerhoff, whom I caught at one of the employees' desks with a list in his hand, in which he was asking all the employees who would not join the I.B.E.W. to write down the reason why they would not join the I.B.E.W. The management was requesting a reason why they felt they could not join the I.B.E.W. I was at home one morning about a quarter after nine when I got a telephone call from one of my fellow employees by the name of John Gray, who called me and told me that Mr. Bott, since the action of the first two days, had proved more or less negligible in advancing the cause of the I.B.E.W., that Mr. Bott had decided to call the employees into his office one at a time.

At a quarter after nine he had called two employees into the office when I was notified on the telephone. I then called up Mr. Bott and told him we were now a formally authorized union and we would present charges against Mr. Bott's action.

S. M. 1403

Q. What did he say? A. Nothing, he just hung up and didn't call any more people into his office.

Q. Who were the first two? A. James Cleary and I am vague about the other person's name.

3530

Q. All right. That's all. You are still employed by the— A. By the Consolidated Edison Company, but I work days now.

Q. When did you switch to day time? A. Last Monday.

CROSS EXAMINATION:

Q. (By Judge Ransom) Mr. McGraham and Mr. Anello are members of the I.B.E.W.? A. They are.

Q. In what department of the company do they work? A. They work in the same department I work in; Consumers' accounts bureau, commercial relations department.

3531

Q. What work did Mr. McGraham do? A. Mr. McGraham is a bookkeeper. Mr. Anello is a meter reader.

Q. And you work where? A. I work in 147th Street.

Q. Near what street? A. Near what avenue, do you mean?

Q. Yes. A. Between Broadway and Amsterdam.

S. M. 1404

Avenue.

Q. Is that a commercial accounting office there? A.

3532

F. W. Lohnes—For N.L.R.B.—Direct

There is a commercial accounting office on two floors of the building.

Q. You spoke of Mr. Walter Jones as having been foreman or assistant foreman of the meter readers. Is he a member of the I.B.E.W.? A. I imagine he is because he did organizational work.

Q. What? A. I imagine he is.

Q. You don't know, you assume he is because he did organizational work? A. I assume that.

3533

Q. Now, is this Mr. Mahart, is he a member of the I.B.E.W. do you know? A. A member, he told me he was a member.

Q. Phillip Wimersey, is he a member do you know? A. He is a member also on his own statement to me.

Q. Do you know whether Wesley Smith is or not? A. I don't know exactly whether Wesley Smith is or not.

Q. This John Gray who telephoned you, isn't he a member of your organization? A. He is.

Judge Ransom: That's all.

(Witness excused.)

3534 S. M. 1405

Mr. Moscovitz: I will call Mr. Lohnes.

F. W. LOHNES, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Moscovitz) Where do you live? A. 545 West 11th Street.

Q. New York City? A. Yes, sir.

Q. By whom are you employed? A. New York Edison.

Q. Now, that is the Consolidated Edison? A. Yes.

Q. What kind of work do you do? A. Electrical construction.

Q. What? A. Electrical construction.

Q. How long have you been working for the company? A. Since May, 1929.

Q. Are you a member of any labor organization? A. Yes, I am a member of the committee for industrial organization.

Q. That's the U.E.R.W.? A. No, the C.I.O.

Q. You mean the Electrical and Radio Workers Union, is that right? A. Yes.

3536

S. M. 1406

Q. Were you before that a member of the Employee Representation Plan? A. Yes, sir.

Q. Did you hold any office in it? A. No, sir.

Q. You did not hold any office in the local of the United Electrical and Radio Workers Union, did you? A. No, sir.

Q. Do you recall reading an announcement by Mr. Carlisle that the I.B.E.W. was recognized? A. Yes, sir.

3537

Q. Do you recall that that was sometime in April, 1937? A. I don't know exactly the date. I know it is just recently.

Q. Yes. Were you asked by anyone any time after you learned of this announcement to become a member of the I.B.E.W.? A. Yes, I was asked.

Q. Was it while you were at work? A. Yes.

Q. By whom were you asked? A. Harry Gill.

Q. Who was Mr. Gill? A. He is a foreman at Hellgate Station.

Q. A foreman? A. And he also has all of the dis-

3538

F. W. Lohmes—For N.L.R.B.—Direct

S. M. 1407

trict in that territory in the Bronx, upper Manhattan.

Q. Foreman of what department? A. Electrical construction.

Q. He is your boss? A. He was then.

Q. And how many men does he have jurisdiction over? A. Well, it varies, you know, according to the work. I suppose at that time he might have had a hundred and fifty men perhaps, something like that.

3539

Q. Yes. A. I wouldn't be in a position to know exactly how many.

Q. That is your best approximation as of that time; is that right? A. Yes.

Q. Well, now, what took place? How did he come to ask you to become a member of the I.B.E.W.? A. Well, he called us up at the office.

Q. Who called who up? Called you alone? A. Well, there was one of the other fellows there too.

Q. What was his name? A. A fellow by the name of Jack Walsh.

3540

Q. Yes. A. He called up at the office around the early part of the afternoon and he asked me to sign a card to join the I.B.E.W.

S. M. 1408

Q. What did you do about that? A. Well, I told him I didn't want to sign the I.B.E.W. card.

Q. What did he say? A. Well, he wanted to know why. Well, I told him I didn't want to, that was all. So, "Well," he says, "you two are the only ones that haven't signed up. Why should you be different than the rest?"

"Well," I told him, "it doesn't make any difference to me what somebody else does." I figured I could do as I pleased about that anyway.

Q. How about Walsh, what did he say? A. Well, he didn't want to sign either.

Q. Did he sign? A. No, he did not.

Q. How long were you in there? A. Oh, just a few minutes, fifteen minutes maybe, he told us over there what I told you. Then he followed us over to the elevator and said he thought we had better reconsider, though we was making a mistake by not signing. He said, "You had better think it over," he says, "and let me know before quitting time." So around—well, we were up in the locker rooms changing clothes and he sent one of his assistant foremen over to ask us if we had reconsidered. At least he did me. I don't know if he asked Walsh or not.

3542

Q. Who was the assistant foreman? A. A fellow by

S. M. 1409

the name of Keeler, Bill Keeler. He asked us if we had reconsidered and I told him I wasn't going to sign anything and that was all there was to it. He never said anything more after that.

Q. Did you notice whether or not other men were being called in? A. Yes, there were several being called in.

3543

Q. Do you know who they were? A. I only actually saw one.

Q. Whom did you see? A. A fellow by the name of Jack Roberts. He was up right after we left.

Q. Did he join? A. Yes, he signed the cards.

Q. How do you know? A. Well, he said he did.

Q. When he came out, he told you he had? A. Yes, so I don't know what was said, I didn't hear what Gill said to him or I didn't hear what he said to Gill, but I know I seen him talking to him and after he came downstairs he told us that he had signed, so that is all I know about it.

3544

F. W. Lohnes—For N.L.R.B.—Cross

Q. Thank you, that's all.

CROSS EXAMINATION:

Q. (By Judge Ransom) What kind of work do you do? A. Electrical construction.

S. M. 1410

3545

Q. Describe more definitely what work you do. Do you do work in the field? A. Well, all of our work, you might say, is field work. It is installing equipment, running conduits, wiring, and all sorts of electrical construction that is done that the company does, around all of their sub-stations, generating stations, and what-not.

Q. Transformers? A. Yes.

Q. Consumers premises? A. No, we don't get that, that is another department. That is a different department altogether.

Q. Well, yours is street work and work around stations? A. No, we just do the inside work.

Q. In the stations? A. In the stations, sub-stations and generating stations.

3546

Q. I think that is all.

(Witness excused.)

Mr. Moscovitz: That is all the witnesses I am going to call, Mr. Examiner.

I have certain information to introduce into the record, however.

On June 7th, 1937, I addressed a letter to Judge Ransom asking him to produce information that I would like to put into the record and he

S. M. 1411

agreed that he would produce it, and one of the

items was the employment record of Eleanor Misbach. She came and her record was produced and introduced.

Another was the report of the foreman of May 7, 1937. That report was produced and introduced.

Another item was a list we referred to of company union delegates which is the Employee Representation Plan. I used this appellation—and officers with their employment records showing also that information. The period that we asked for was April 1st, 1937 to June 1st, 1937. Judge Ransom has handed me this afternoon the list of the delegates and officers with their employment records showing the overtime that they worked. I have looked it over and would like now to put it into the record. The only question I have in mind is one which I will ask the Judge. Perhaps he can explain.

3548

In April and May, 1937, there is a designation of E.R.P. work being done. Now, that is the same E.R.P. designation that existed prior to that period of time.

Judge Ransom: Yes, you asked, Mr. Moscovitz, for the overtime in April and May of 1937.

6549

Mr. Moscovitz: Yes sir.

Judge Ransom: Doubtless the E.R.P. work during those two months would be predominantly in April. It is the E.R.P. under the Employment Representation Plan where any is shown.

Mr. Moscovitz: Now, the only point I would like to make is whether or not E.R.P. work still

S. M. 1412

appears on records of individuals after May, 1937, if you happen to know.

3550

Proceedings

Judge Ransom: My impression is insofar as any instances have come to my attention, that those E.R.P. activities were all wound up either in April or very early in May.

Mr. Moscovitz: Yes.

Judge Ransom: The latter part of April and around the 1st of May, all of the councils that I know of were winding up and closing up such few matters as they had open.

Mr. Moscovitz: I offer this at this time.

3551

Trial Examiner Gates: It may be admitted.

(Document referred to received in evidence, marked Board's exhibit #19 for identification).

Mr. Moscovitz: In addition to the exhibit which I just introduced, I asked for the production of the systems, referring to the Consolidated Edison System, collective bargaining expense sheets from July 5, 1935 to date. That would be as of June 7, 1937, and I indicated that that statement is probably account #5-657, and I also asked for an account number 102, Job #8, which is also, as I understand it, an expense account.

3552

I have not yet received either one of those two items, and—

Judge Ransom: As I understand the accounting situation, the matter which Mr. Moscovitz specified and indicated by account number and

* S. M. 1413

job number and expense account are not indicative of what he evidently wanted. For example, there is no account number 1002, job #8, which is an expense account, and there is nothing which is a system collective bargaining expense sheet from July, 1935 to date account No. 5-657.

I have here today, for example, a photostat of this 5-657. It is not in any sense a collective bargaining expense sheet system. I have said to Mr. Moscovitz that I inferred from those two specifications what he wanted, while his specifications would not give him what he wanted; that I have issued an instruction to have that material assembled from each of those respective companies. I am entirely willing to have the hearing held open in that respect so that he may put in that data when it is completed and produced, or I will undertake to put it in as part of my own case when it is reached, either way.

3554

Mr. Moscovitz: Well, I would prefer leaving our record open, so that it can be introduced and put in when produced.

Judge Ransom: That is entirely agreeable to me, that is, there is no such thing as Mr. Moscovitz asked for, the systems collective bargaining expense sheet. There are various accounts and records in various companies which have to be assembled and summarized.

Trial Examiner Gates: Very well.

3555

S. M. 1414

The record may be left open.

Mr. Moscovitz: May I have just one moment, Mr. Examiner?

Trial Examiner Gates: Yes.

Mr. Moscovitz: I will wait for the production of that information. I understand the record will be kept open for that purpose.

Trial Examiner Gates: Yes.

Mr. Moscovitz: I wonder, Judge, are you going to start your case this afternoon?

3556

Proceedings

Judge Ransom: No.

Mr. Moscovitz: I think perhaps we ought to discuss at this point—

Judge Ransom: I think we ought to take a recess and talk about it.

Mr. Moscovitz: May we have a five minute recess?

Trial Examiner Gates: We will recess for five minutes.

3557

(Whereupon a short recess was taken)

AFTER RECESS

Trial Examiner Gates: Proceed.

Judge Ransom: Mr. Examiner, as I understand the situation, the case of the Board is completed, aside from the one matter in respect to which it is kept open.

Mr. Moscovitz: Yes.

Judge Ransom: I was going to mention also that if agreeable to Your Honor that I think that

S. M. 1415

3558

both the respondent and I understand Mr. Moscovitz would like to leave open the making of any motions which either of us may wish to make addressed to any parts of the record, we would like to leave that open until we have had a chance to examine this rather voluminous record, if that is agreeable to Your Honor.

Trial Examiner Gates: Very well.

Judge Ransom: Now, with respect to time of proceeding, with any testimony in behalf of the respondents subject to our general reservations of rights and objections with respect to jurisdiction, Mr. Carlisle, the chairman of the Board of the

Consolidated Edison Company of New York whose statements have been referred to, I may say, I think within reason by almost every witness who has been called by the government is in Europe attending a meeting of the Executive Committee of the World Power Conference, which is a quasi public or quasi governmental organization. He will return to this country, as I understand it, on the night of July 5th.

Obviously this record, it does not seem to me, should or could be fairly closed without giving us at least a reasonable opportunity for Mr. Carlisle's production and testimony. 3560

Aside from that element, I should need at least a week to examine the record and prepare some analysis of the matters on which I might wish to offer rebuttal. My present impression is that the extent of those matters will not be time consum-

S. M. 1416

ing. Under all the circumstances I request on behalf of the respondents as needed for the fair presentation of our case a recess until July 6th, at which time the remaining data desired by Mr. Moscovitz will be produced, any desired notions on either side may be made and the respondents may proceed and will proceed with any testimony in their behalf. 3561

Trial Examiner Gates: Is there anything further? We will take another recess.

(Whereupon a short recess was taken at this point.)

Proceedings

AFTER RECESS

Trial Examiner Gates: Proceed.

Judge Ransom: If I may add briefly to the statement which I had made before recess, I do not think that anyone of us, certainly no one on respondent's side, was aware until yesterday afternoon that this proceeding was likely to terminate today or this week. A considerable number of witnesses who had been brought to this room were excused and have not been called and therefore the case is now terminating so far as the government's side is concerned. There are thirteen hundred and one pages in this record of the stenographic transcript, exclusive of today. I submit that in many ways the cooperation of the respondents and their counsel have expedited this hearing. Many matters which might easily have been utilized, had there been any such dis-

S. M. 1417

position to protract these hearings through many pages, and days of testimony have been obviated by the presentation and submission of data in compact form.

With respect to an adjourned date, I find myself in this position: Mr. Carlisle, as I have said, whose actions and statements have been referred to by practically every witness during these hearings, is in Europe, not on a vacation but on a matter of public or quasi public business. Mr. Dean, vice president of the New York and Queens Electric Light and Power Company is in Milwaukee attending this week the convention of his profession, the American Institute of Electrical Engineers.

Mr. Dean's company is that which is claimed to have discharged five of the six employees, to which this action or this proceeding, as I see it, primarily, relates. Under those circumstances it is entirely impracticable and physically impossible to proceed this week or early next week. I submit that with a record of such size, and under such circumstances involving issues which are to some extent new and pioneering issues that we are entitled fairly to a decent time to examine this voluminous record and see what testimony the respondents may desire to present in rebuttal and we are entitled to have those two principal witnesses available for testimony. I, accordingly, in behalf of the respondents, ask an adjournment until, or a recess, until July 6th.

3566

S. M. 1418

I point out further that this is not a situation of a single employer, this is a case involving seven employers' companies at different localities, two of them not within the City of New York are companies operated by local executives. A great number of alleged supervisory employees have been referred to, men whose capacities with those companies are so humble that at least I, with some years of familiarity with these company affairs, have not in any instance, I think, ever heard of the men claimed ever to be important supervisors and I think that we are entitled to an opportunity to examine the record and consult with the respective companies regarding these allegations.

3567

Further, under such advice and instructions as you have today received by telephonic confer-

3568

Proceedings

ence with the National Labor Relations are not able to grant the request which I make I ask that the hearing be, in any event, adjourned to July 6th, and that I may be given an opportunity on behalf of the respondent without prejudice to our contentions as to any jurisdiction in this Board at all, that I be given an opportunity to present the matter to the Board so that the Board may determine whether these witnesses shall or shall not be heard at that time.

3569

Mr. Moscovitz: I have nothing to say.

Judge Ransom: May I say this, further: Here is a case which I believe is a pioneering case, it

S. M. 1419

involves a new question, or several new questions, not merely the question of National Labor Board jurisdiction over local public utilities, even though some of them are large and important, but also a question of boundaries of state and federal jurisdiction. Here is a sovereign state whose franchise holding creatures are brought before the Board; the state has regulated those respondents for many years in many respects. Lately the State of New York has set up a system of regulation and public supervision of the labor practices of its corporate creatures; including the respondents. The question is certainly new as to whether with respect to employers of the character of these respondents, they are under the jurisdiction of the National Labor Board at all or under the exclusive jurisdiction of the State Labor Board, or whether in some manner the exercise of Federal regulatory power over labor practices has absorbed and sucked dry the powers of the State of New York

3570

as to such matters. The question is important, not merely in the state of New York and to these respondents, but I believe there is some 16 or 17 other states in which a like question is presented. So far as I know this is the first major case of that character and I am quite sure it is the first case of that character which presents that question as to local public utilities. Under those circumstances, I say sincerely in behalf of these respondents that we would be sorry to see the

3572

S. M. 1420

question of what seems to us, frankly, an arbitrary denial of fair and full hearing interjected into a case which presents an important question of law and policy.

We submit that in behalf of the respondents, that, maintaining fully our questions and contentions as to jurisdiction, we have co-operated to the utmost in expediting the presentation of this case, and in helping to bring out such facts as may be helpful to the Examiner and to the Board in the determination of the case, and we respectfully ask that opportunity through such few witnesses as we may wish to call.

3573

If Your Honor is at the moment under your instructions, powerless to present that request, I ask opportunity between now and the 6th of July to present the matter to the Board.

Trial Examiner Gates: Will you state for the record at this point the title of Mr. Dean?

Judge Ransom: Mr. Dean is vice president of the New York and Queens Electric Light and Power Company, and I state also for the record that Mr. Dean is, in the opinion of counsel for the respondents, an indispensable witness to the

3574

Proceedings

issue presented by the complaint and the charge with respect to the discharge of five employees of the New York and Queens Electric Light and Power Company who are, I believe, five of the six to which this complaint relates.

Trial Examiner Gates: Do you care to give

S. M. 1421

3575

any idea as to how much time will be required on direct examination of any witness that you might call.

Judge Ransom: As far as I am able to tell, I wouldn't want to be bound by this on any time clock basis, I would say that from any impressions that I have, that the direct examination of all witnesses in behalf of the respondents would not occupy more than a day. My personal impression is that it will occupy less.

Now, that does not seem to me an unreasonable request, that we be given the opportunity. I should think the Board would want a continuance of such help as the respondents can give in bringing out the full facts.

3576

I submit also that in fairness, it should be recognized that at least up to this moment, the respondents and their counsel have been helpful in eliciting facts which the Board should have before it.

Trial Examiner Gates: The hearing may be adjourned until the 6th of July for the purpose of taking the testimony of Mr. Carlisle. I will reserve decision as to taking any further testimony.

In the meantime, respondents, if they see fit, may petition the Board for permission to introduce testimony other than that of Mr. Carlisle in compliance with the statement you just made.

Perhaps it may also be well to state that

S. M. 1422

should it be impossible for me to resume the hearing on the 6th of July, I shall ask that the hearing may be postponed and set for another date, on two days notice.

Judge Ransom: We shall be entirely willing to conform to your situation in that respect as long as it would not take place a date earlier than the 6th.

3578

Trial Examiner Gates: If there is nothing further—

Mr. Moscovitz: I understand that this adjournment period does not bar me from making whatever motions may be necessary at the next return date, that is, the next adjourned date.

Judge Ransom: I understand that in any event, on that date, that Mr. Moscovitz and I each have a right to make any motions that we see fit and that this additional data which Mr. Moscovitz has specified on the record will be supplied, and that he may offer it if he wishes and that the testimony of Mr. Carlisle may be offered on that date under your Honor's ruling, and that the question of whether I am to be permitted to offer any other witnesses on that date and have such testimony received is reserved for determination at that time, and I state that it is my present intention, meanwhile, to present the matter to the consideration of the Board, so that if they wish to give any further instructions to you, as Trial Examiner, that may take place.

3579

Trial Examiner Gates: The hearing is adjourned until 10:00 A. M., July 6th.

3580 S. M. 1423

Minutes of Hearing, Held July 6, 1937

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SECOND REGION

IN THE MATTER
of

3581 CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., and its affiliated Companies,
BROOKLYN EDISON COMPANY, INC.,
NEW YORK & QUEENS ELECTRIC LIGHT
& POWER COMPANY,
WESTCHESTER LIGHTING COMPANY,
THE YONKERS ELECTRIC LIGHT AND
POWER COMPANY,
NEW YORK STEAM CORPORATION,
CONSOLIDATED TELEGRAPH & ELE-
CTRICAL SUBWAY COMPANY,

Respondents,

and

3582 UNITED ELECTRICAL AND RADIO WORKERS
OF AMERICA, Affiliated with the COMMIT-
TEE FOR INDUSTRIAL ORGANIZATION.

Case No.
II-C-224

14 Vesey Street,
New York City, N. Y.,
July 6, 1937.

The above-entitled matter came on for hearing pur-
suant to adjournment taken June 24th, 1937, at 10:00
o'clock A.M.

Before:

ROBERT M. GATES, Trial Examiner.

Appearances:

DAVID A. MOSCOVITZ, Esq., Attorney for the National Labor Relations Board.

WILL MASLOW, Esq., Attorney for the National Labor

S. M. 1424

Relations Board.

LOUIS B. BOUDIN and SYDNEY ELLIOTT COHN, 8 West 40th Street, New York, N. Y., appearing for United Electrical and Radio Workers Local 1212.

3584

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ, 40 Wall Street, New York City (By William L. Ransom, Jacob H. Goetz and Pincus M. Berkson, of counsel), appearing specially for the respondent companies, reserving all objections to jurisdiction.

S. M. 1425

PROCEEDINGS

Trial Examiner Gates: Whenever you are ready, Mr. Moscovitz.

3585

Mr. Moscovitz: Judge Ransom, Mr. Examiner, has produced for me today a summary of charges and accounts covering general welfare, collective bargaining and employee representation plan, and it includes expenses for account of general councils of companies merged into certain companies that are named here during that period, and the period is 1934 to 1937.

This was produced at my request. I would like to make it part of the record but before doing so I would like to have the opportunity of reading it perhaps at noon and offering it this afternoon.

3586

Proceedings

Judge Ransom: That is agreeable.

I may say this, as I stated to Mr. Moscovitz, it does not include the Westchester Lighting Company or the Yonkers Light and Power Company. A considerable amount of time would be required in digging out those items from their time sheets and records, and the amount would be relatively slow, so hardly worth the delay, I take it.

Mr. Moscovitz: I have but one general motion to make this morning, Mr. Examiner, no others.

3587

I move to have the pleadings in this case conform to the facts.

S. M. 1426

Judge Ransom: What does that motion mean. I think it should be made definite and certain.

Trial Examiner Gates: Do you contemplate any important change by that, Mr. Moscovitz?

Mr. Moscovitz: No, I do not. Just a question of having the dates and other matters which appear in the complaint made certain by the testimony of witnesses who have appeared in the proceedings.

3588

Judge Ransom: I object to that decidedly. We are here upon the complaint and charge.

Granted that the proof does not sustain the complaint and the charge, I do not believe that this Board would have power to amend at this stage, and it will certainly appear that there has been no notice of hearing upon anything except the complaint in its present form.

Trial Examiner Gates: Motion is granted.

Judge Ransom: Exception.

If that completes the case for the government, subject to a later marking of this further exhibit, I have several motions which I would like to make for the record.

I move to strike out the testimony of Philemon Ewing,

on the ground that neither the complaint nor the charge specifies, or makes any complaint or charge concerning the termination of employment of Philemon Ewing, as one of the matters to which this proceeding relates; and on the further ground that the respondents Consolidated

S. M. 1427

Edison Company of New York, Inc., which terminated the employment of Philemon Ewing on January 18, 1936, has not been served with any notice of hearing, or any copy of any complaint or charge relating to the termination of employment of Philemon Ewing.

3590

Trial Examiner Gates: As I understand it, Mr. Moscovitz, the Board did not intend that the complaint cover the discharge of Ewing, is that correct?

Mr. Moscovitz: The complaint as originally issued does not cover the case of Ewing.

Trial Examiner Gates: Do you intend by the motion just granted to have it covered?

Mr. Moscovitz: Yes.

Trial Examiner Gates: In that event I will change my ruling.

Mr. Moscovitz: Well, then, does the change in ruling go only to the Ewing addition? 3591

Trial Examiner Gates: Yes.

Judge Ransom: As I understand it, Your Honor has not allowed any amendment or conformance of the complaint to bring the terminations of employment of Philemon Ewing within the scope of the matters alleged as a basis for the complaint as charged?

Trial Examiner Gates: That is correct.

Judge Ransom: I move to strike out.

S. M. 1428

Trial Examiner Gates: That motion to strike out his testimony is denied.

3592

Proceedings

Judge Ransom: Exception. I move to strike out the testimony of Charles A. Smith on the ground that Mr. Smith's testimony relates exclusively to alleged activities on his part prior to July 5, 1935, the date of the taking effect of the National Labor Relations Act.

Trial Examiner Gates: It may stand.

Judge Ransom: Exception. I move to strike out the testimony of Foster Strader, Stephen Solosy and Philemon Ewing, in so far as this testimony relates to the matters stated by such witnesses to have taken place prior to July 5, 1935.

3593

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception. I move to strike from the testimony of all witnesses on behalf of the government such parts thereof as relate to the activities of the E.R.P., prior to April 12, 1937, on the ground that such testimony is not relevant or pertinent to any issue raised by the complaint or the charge upon which the complaint is based and upon the ground that the complaint or charge does not set forth or give any notice of any issue concerning the activities of or in behalf of the E.R.P.

3594

Trial Examiner Gates: The motion is denied.

Judge Ransom: Exception.

S. M. 1429

I renew the motions heretofore made to dismiss the complaint or charge on the ground that the amendment to the complaint herein and the testimony presented in support thereof have made the I.B.E.W. and each of the local unions of the I.B.E.W. specified in such testimony necessary and indispensable parties respondents in this proceeding and also on the further grounds stated in behalf of such motion when made.

Trial Examiner Gates: Will you state, Judge Ran-

som, when those several locals were chartered? Of the I.B.E.W.?

Judge Ransom: I don't think that is within my knowledge, I have never been acquainted with those dates.

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception.

I move to dismiss charge 1 and the corresponding parts of the complaint for failure to prove facts sufficient to constitute a case or a cause for grievance under the National Labor Relations Act and particularly because it now affirmatively appears that the work of the employees whose services were terminated or such terminations of their service did not affect interstate commerce and weren't related to activities that affected interstate commerce.

3596

Trial Examiner Gates: Motion is denied.

Judge Ransom: I move to dismiss the charges two and three and the corresponding parts of the complaint

S. M. 1430

for failure to prove cause of action or grievance under the National Labor Relations Act and upon the further ground that the acts complained of not only entirely ceased according to the record but any apprehension of their recurrence has been completely removed by the action of each of the respondents evidenced by the agreements as of June 15th, 1937, entered into by the respondents and the I.B.E.W. and the local unions thereof, the local unions it having been testified in this case, constitute employees of the respondents.

3597

Trial Examiner Gates: Two and three?

Judge Ransom: That is with respect to what I would suppose would be a claim of coercion and financial support, use of company premises and company time in aid of labor organization.

3598

Proceedings

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception.

I move to dismiss the complaint in the proceeding upon each and all of the grounds stated in the notice of motion served in behalf of the respondents on May 17, 1937 and upon each and all the grounds stated in support of such motion upon the record of this proceeding and upon the further and particular grounds that the facts which have been stipulated by and between the parties in this record and embodied in Exhibit #2 affirmatively and wholly disprove the allegations of paragraphs 11 and 12

3599

S. M. 1431

of the complaint and on the further ground that there has been a complete failure on the part of the government to prove the allegations of paragraph 13 of the complaint, and upon the further ground that it now affirmatively appears that there is no basis for jurisdiction of the National Labor Relations Board over the respondents or their labor practices, and that the matters and things alleged in the complaint now affirmatively prove to in no way affect interstate commerce.

3600

Trial Examiner Gates: What paragraph is that?

Judge Ransom: Paragraphs 12 and 13—well, they allege various acts.

(Discussion off the record.)

Trial Examiner Gates: Motion is denied.

Judge Ransom: Exception.

I move to dismiss the complaint upon the grounds that events taking place after the commencement of these proceedings, namely, the contracts shown by the record to have been entered into as of June 15, 1937, by and between the respondents and the I.B.E.W. and the respective local unions thereof have rendered moot any

controversy raised by the allegations set forth in paragraph 17 to 22 of the complaint and paragraphs 2 and 3 of the numbered charge, so that there is not and could not be the basis for granting an relief founded on such

S. M. 1432

allegations of the charge or upon proof adduced in support thereof and upon the further grounds that the National Labor Relations Board is without power or jurisdiction to hear or determine any such allegations or proof or to grant any relief upon the basis thereof, when and where it affirmatively appears that labor agreements such as those entered into, as of June 15th, have been executed and are in force between respondents complained of and the labor organizations mentioned.

3602

Trial Examiner Gates: The motion is denied.

Judge Ransom: And I ask leave to amend the answer which was filed and served on behalf of the respondents so as to set up by way of a further separate defense the matters and things referred to in the last summation.

Trial Examiner Gates: Any objection?

Mr. Moscovitz: No objection.

3603

Trial Examiner Gates: It may be so amended.

Judge Ransom: Now, I will call to the stand, Mr. Carlisle.

May the record show that I except to each of the rulings?

Mr. Moscovitz: Mr. Examiner, I thought before Mr. Carlisle was sworn, I would offer this exhibit, the summary of charges and accounts covering general welfare, if I may first have a word with Judge Ransom about the Westchester Company and the Yonkers Company.

S. M. 1433

Judge Ransom: The rule or provision of the Em-

3604

Floyd L. Carlisle—For Respondents—Direct

ployees Representation Plan, which is quoted in a note in this proposed exhibit, as applicable to the companies for which this exhibit brings together the figures, my understanding is that a like rule applied in Westchester County as to the Westchester Lighting and the Yonkers Lighting and Power Company. The rule and the practice are the same. What is lacking here, owing to the length of time that would be required to assemble amounts is detailed figures for those two companies.

3605 Mr. Moscovitz: With that explanation, Mr. Examiner, I offer this exhibit.

Trial Examiner Gates: There being no objection it is admitted.

(Document referred to, marked Board's exhibit No. 20 received in evidence, Witness Carlisle.)

FLOYD L. CARLISLE, called as a witness for the respondents, being first duly sworn, testified as follows:

Direct Examination:

3606 Q. (By Judge Ransom) What is your position with the Consolidated Edison Company of New York? A. I am chairman of the Board of Trustees.

Q. And how long have you been such? A. Three years.

Q. Are you a member of the Board of directors of each of other companies which are respondents in this case? A. I am.

S. M. 1434

Q. In behalf of the management of each of the respondent companies, have you personally been their spokesman and negotiator in major matters affecting the labor policy and collective bargaining? A. I have.

Floyd L. Carlisle—For Respondents—Direct

3607

Q. In the month of April, 1937, after consultation with the management of the respondent companies, did you conduct collective bargaining negotiations with the I.B.E.W.? A. I did.

Q. With whom did you negotiate? A. With Mr. John Tracy, the President of the International organization.

Q. Were the negotiations upon his initiative or yours? A. They were upon his.

Q. What did he ask you to do? A. He asked to recognize his organization for collective bargaining.

3608

Q. Did he ask you to do anything beyond that by way of a labor agreement? A. Yes, he asked that a complete labor agreement be entered into which would be the subject of discussion and completion.

Q. Did he demand of you that the companies grant to the I.B.E.W. a closed shop? A. He discussed it. He did not demand it.

S. M. 1435

Q. Did you grant it? A. We did not.

Q. Did Mr. Tracy demand of you the so-called check-off system of collecting union dues? A. He did not.

3609

Q. Did he at any time formally, that is, by letter, make the demand upon you for recognition of the I.B.E.W. as a collective bargaining agency with the management of the respondent companies? A. He did.

Q. And do you recall whether that was a letter of April 16th or thereabouts? A. It was in the form of a letter from Mr. Tracy, the exact date of which I do not remember, but it was approximately that time.

Q. I show you a copy of Board's exhibit #13-A, in this case, which appears to be a letter from Mr. Tracy to you dated April 16th and ask you if you recognize that as a copy of the letter which you received from Mr.

3610

Floyd L. Carlisle—For Respondents—Direct

Tracy or with respect to a recognition of the I.B.E.W. for collective bargaining? A. I recall that that is a copy of the letter.

Q. And the government has placed in evidence as Board's exhibit #13-B, a copy of a letter dated April 20th, 1937, to Mr. D. W. Tracy. I ask whether that is a copy of the letter which you sent to Mr. Tracy in reply to his letter of April 16th? A. This is the answer

S. M. 1436

3611

to that letter.

Q. That was sent by you? A. Yes.

Q. When did you decide to grant recognition to the I.B.E.W. as a collective bargaining agency? A. Within a day or two prior to the sending of that letter.

Q. And would you say that your final decision was represented by your letter to Mr. Tracy which granted this recognition? A. It was.

Mr. Moscovitz: When you say a day or two before the letter was sent, do you mean a day or two before Mr. Tracy sent his letter to you?

The Witness: No, the answer of April 20th.

3612

Q. (By Judge Ransom) Now, before granting recognition to the I.B.E.W. did you communicate your decision to any representatives of the employees? A. I did.

Q. To whom? A. I called together the chairmen of the various councils within the systems who administered the employees representation plan.

Q. Can you fix that as of the day when your letter went to Mr. Tracy? A. My recollection is that the meeting with the chairmen of the councils was on the

S. M. 1437

20th of April, the date that this letter was sent.

Floyd L. Carlisle—For Respondents—Direct

3613

Q. And do you recall whether it was morning or afternoon, the meeting with the chairmen of the general councils? A. The meeting was, I believe, at ten o'clock in the morning.

S. M. 1438

Q. At the time that you talked to the chairman of the councils, did you tell them that the management of the companies had decided to recognize the I.B.E.W. for collective bargaining? A. I did.

Q. Had you then sent to Mr. Tracy the letter? A. I had not.

3614

Q. Testimony has been given here in which it was asserted or claimed that the time that you talked to the chairman of the general councils on the morning of Tuesday, April 20th, you told them that you were going to recognize the I.B.E.W., had you already sent your letter to Mr. Tracy and had sent it to the newspaper publications, is that a fact? A. That is not a fact.

Q. You sent your recognition letter to Mr. Tracy that day? A. I did.

Q. After telling the general council chairman you were going to? A. That's correct.

3615

Q. And was any release of the letter—was there any release of the letter for newspaper publication; was that before or after you had had this meeting with the council chairman? A. It was after a meeting of the council chairman.

Q. Now, on a later day that week, did you have any

S. M. 1439

conference or attend any meeting at the request of the chairman and members of the general council? A. I did.

Q. Can you state how long that was after the first

3616

Floyd L. Carlisle—For Respondents—Direct

meeting with the general council chairman? A. Well, my recollection is that it was the following day, but I am not absolutely certain whether it was that day or the next day.

Q. In any event, it was within a day or two after the meeting with the general council chairman on the 20th?

A. It was.

Q. Was your meeting with the general council chairman on the 20th, was that solely for the purpose of telling them that you were going to recognize the I.B.E.W.?

3617 A. Not solely, no.

Q. What, if any other purpose, did you have in going before the council chairman in behalf of management, was there any other announcement or information which you and your associates in the management had to communicate to them that day? A. There was.

Q. What was it? A. The United States Supreme Court decision in the Wagner Labor Act, in spirit, clearly would prevent a continuation of the company's support of the employees representation plan and a bill that was pending in the New York State Legislature

3618

S. M. 1440

which seemed certain of passage, it having the support of the Governor and members of the legislature, had similar provisions and I felt that it was only fair to the chairman of the employee representation plans that they should be told that the company would not go on with a continuation of that collective bargaining arrangement.

Q. That is, from the time that the employees representation plan was set up and the employees began choosing their representatives for collective bargaining under that, had the companies upon the certification of the various general councils been paying the expenses of elections and, I mean, such expenses as printing and

transporting of the ballot boxes and voting booths and the like, and also allowing time off where it was necessary for employees to vote in elections or attend council meetings? A. The company had done that.

Q. And as those expenses were certified to the management of each of the respondent companies, vouchers of that character had been paid ever since the E.R.P. system had been set up for employees' elections? A. That is correct.

Q. At this meeting of the 20th, with the general council chairman, what did you tell them as to whether you could or would in view of the approaching State law and

3620

S. M. 1441

the spirit of the Federal law, what did you tell them as to whether you would go on continuing those payments? A. I told them that we would not do it.

Q. What did you tell them at that time, if anything, as to whether you felt warranted in continuing collective bargaining negotiations with councils whose expenses had been paid upon their certification for several years?

A. Well, I had a copy of the State Act with me, I read from it, I stated to the council that I did not believe, I had been so advised from the decision that we had over the holding company still that we were under, the National Act, that it was perfectly obvious that the State Act was about to be passed and we would be under that Act and that that Act prohibited the payment by an employer for any purpose to a labor organization with whom collective bargaining was transacted and we just could not proceed, would not proceed further.

3621

There was some incidental expenses that had been incurred by the councils which we said we would pay but we were no longer willing to use that method of collective bargaining.

3622

Floyd L. Carlisle—For Respondents—Direct

Q. That is, as far as the councils were concerned, then, as I understand your testimony, you told them that you could not continue as a permanent matter col-

S. M. 1442

lective bargaining with them? A. I told them that that would not be continued.

3623

Q. And did you say anything to them, or not, as to winding up what affairs they had pending? Did that come up, or not? A. Well, I don't recollect that that was discussed, other than in the most casual and minor way.

Q. Did any of the council members ask you, if you recall it, any questions about an independent union? A. They did.

Q. What did you tell them, as you recall it? A. I read the provisions of the Doyle Bill, which I expected to be enacted into law, and I said, "Now, it is not the law, it is the spirit of the law, and we are going to proceed under that. We have no right to make any suggestions or recommendations as to the nature and the character of an organization that might be set up by the employees.

3624

Q. Well, did you make any definite statement to them as to whether or not the company could in any way pay or reimburse any expenses of an independent union, if the employees decided to have one? A. I said that my reading of the law was they could not.

Q. Did you say that the companies would not give any financial aid? A. I did.

Q. Did you undertake to tell them or advise them whether they should or should not form or join an independent union? A. I did not.

S. M. 1443

Q. Did you tell the councils that their members ought to form local unions of the I.B.E.W.? A. I did not.

Q. Did you tell the council members or any other employees that they ought to join the I.B.E.W. or that they ought not to join any labor organization? A. I did not. On the contrary, I tried to express myself in the most clear and emphatic manner that I could, that every employee, so far as the management was concerned, must make his decision entirely upon his own.

Q. Do you recall making this statement to the members of the general councils at the second meeting with the members, as well as the chairman present, do you recall saying this: "Let me say it very plain, no member working for this company has got to do anything except what they want to do individually, on their own. I will be very clear about that. It was your selection. You are to do as you please. We are not taking the position that you must do this or you cannot do this. You have to make the choice." A. I said that, certainly, in substance.

3626

Q. In recognizing the I.B.E.W. for collective bargaining, did you close the door to individual employees or groups of employees so far as discussions of any grievances with the management is concerned? A. We did not.

3627

S. M. 1444

Q. As a matter of fact, in the past, has the management conferred with various employees and groups of employees from time to time on matters as to which such employees or groups of employees felt that grievances existed? A. It has.

Q. Several of those instances have been testified to here. Does the recognition of the I.B.E.W. as collective bargaining agency change in any way your policy or your practice so far as such discussion of grievances with individual employees who wish to present them individually, or with groups of employees who wish to bring such grievances to you? A. It does not change it.

3628

Floyd L. Carlisle—For Respondents—Direct

Q. There has been testimony here, Mr. Carlisle, that the general councils of the employees elected under the E.R.P. had maintained offices for collective bargaining purposes on company's premises, and that those council officers and members were not immediately put out of those offices on the 20th or 22nd of April, but continued to occupy them for several days after that. Was there any reason why you did not put them out immediately or stop their occupancy of company premises? A. Why, we expected that in ordinary decency they would have a chance to clean up the various matters that were pending or that were related to the dissolution of those organizations.

3629

S. M. 1445

Q. Were these the general councils that had been elected by the employees themselves? A. It was a continuation of the councils that were set up at the time of the NRA.

Q. Why didn't you shut I.B.E.W. representatives out of company premises? A. Why, I never understood that we were conducting a policing of the company's premises, the contract with the I.B.E.W. provides that solicitation shall not be had upon the company premises or upon the company time for membership, and that was the expression of the arrangement that was to be made.

3630

Q. Did that seem to you the practical way of dealing with that matter so far as members of the I.B.E.W. was concerned? A. That seemed to be the only practical way.

Q. I take it that you are referring to the provisions of Article 2, Section 2, of the Labor agreement as of June 15th, which provides that the Brotherhood agrees for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also

Floyd L. Carlisle—For Respondents—Direct

3631

agrees not to solicit membership on Consolidated Company time or property. A. That's right.

Q. As a matter of fact, has the management ever undertaken or has it ever felt confident that it could, if it wished, control what the employees think about or talk

S. M. 1446

about on company time? A. Well, there are 40,000 employees plus; I assume that we still have free speech in America. It is inconceivable that any employer could force what the employees might discuss with each other, certainly we never attempted to do it. They could discuss anything they please with each other. Normally, I assume they do, but the provisions of the contract contemplate, the principle is that company time and company property are devoted to company uses primarily. What individual employees might discuss with each other is none of our business.

3632

Q. Did your companies make collective bargaining agreements as to wages, hours and conditions of employment, each of the respondents with a local union comprising employees of that respondent? A. It did.

Q. The exhibit which is in evidence here, No. 14, is a photostatic copy; do you identify that as a copy of the agreement with its various riders?

3633

(Exhibit 14 passed to the witness.)

A. I do.

Q. Did you and others of the management personally negotiate these several contracts with the I.B.E.W.?

A. We did.

S. M. 1447

Q. Who represented and acted for the employees in negotiating and signing these agreements? A. Either the officers or committees of the locals did.

3634

Floyd L. Carlisle—For Respondents—Direct

Q. In various of the respondents, do you know whether committees were elected by the employees constituting those locals for the purpose of negotiating and signing those agreements? A. That is what they stated to date.

Q. In any event, as to the New York Edison, or the Consolidated Edison Company, there was a committee of employees from the local union? A. That is correct.

Q. And did you conduct the negotiations personally with those committees? A. I did.

3635

Q. Did Mr. Tracy participate in the negotiations? A. He did not.

Q. Did you—do you know or does the management of any company know how many of its employees belong to the I.B.E.W.? A. I do not. I do not know myself.

Q. And the I.B.E.W. furnished the company information as to the membership of its local unions among your employees? A. It has.

Q. I show you this sheet and ask if that is a copy of the data which has been furnished to the management by the I.B.E.W.? A. That's right.

3636

S. M. 1448

Judge Ransom: I offer it in evidence.

Trial Examiner Gates: There being no objection, it will be received.

(Document referred to received in evidence and marked Respondent's Exhibit 16, Witness Carlisle.)

Judge Ransom: My associate calls to my attention that the memorandum of agreement between Consolidated Edison Company and the I.B.E.W., Board's Exhibit 14, was only marked for identification and has not been marked in evidence. I now offer it in evidence.

Floyd L. Carlisle—For Respondents—Cross

3637

Mr. Moscovitz: No objection.

(Document referred to previously as Board's Exhibit 14 for identification is now received in evidence and marked Board's Exhibit No. 14, Witness Carlisle.)

Q. (By Mr. Ransom) Mr. Carlisle, there has been testimony here with respect to the termination of employment of some six employees; did you have anything to do with laying off or discharge of any of these men to which that part of the proceeding relates? A. I had nothing to do with it.

3638

Q. Aside from your general knowledge of the possibilities with respect to reduction in forces where the economical and efficient operation would be served by a reduction in force, you had nothing to do with individual

S. M. 1449

cases? A. That is correct.

Mr. Ransom: That is all.

CROSS-EXAMINATION:

Q. (By Mr. Moscovitz) Mr. Carlisle, you testified that for the last three years you have been the chairman of the Board of Trustees of Consolidated Edison Company? A. Well, there was the Consolidated Gas Company that was the parent company. I was chairman of the Board of the New York Edison Company for, I think, four years, and the parent company Board for three. That may be inexact as to exact time.

3639

Q. And during the last three years, have you also been the spokesman for the system on labor questions? A. On major labor questions.

Q. And the major labor questions would be consideration of proposed collective agreements? A. That's right.

3640

Floyd L. Carlisle—For Respondents—Cross

Q. Yes. As well as the operation of your employee representation plan? A. I sat in at various times with the chairman of the general councils when wage changes were made or important changes were made such as restoring overtime and so on.

Q. The employee representation plan came into existence in 1934, or at the time of the NRA approximately, isn't that right? A. That's right.

S. M. 1430

3641

Q. Before that time, there were no employee representation plans within the system? A. That is correct.

Q. And am I accurate in using the word "system," as applying to the respondents in this case? A. I think that is correct.

Q. How long have you been associated with the system? A. Since 1930.

Q. And before that, you were not employed by any one of the company respondents in this case? A. That's right.

3642

Q. Now, when you came with the system in 1930, there was no form of labor representation in the system; is that right? A. There was no formal organization of employees.

Q. Yes. And questions of grievance would be taken up in accordance with the method outlined by the particular foreman or superintendent of the particular plant where the grievances would arise; isn't that right? A. Yes.

Q. More or less catch as catch can on those questions at that time? A. Well, I wouldn't say that it was catch as catch can. There were discussions, various depart-

S. M. 1451

ments had discussions, various plans of wages schedules

Floyd L. Carlisle—For Respondents—Cross

3643

were discussed. It was not the cold-blooded "take it or leave it" proposition, by any means.

Q. Yes. Was it called to your attention at any time after you went with the system that an independent labor organization known as the Independent Brotherhood of Utility Employees was in the field? A. I don't remember the date. I think it came about the time of the NRA.

Q. Yes. And was it brought to your attention that that organization was organizing in your system? A. I knew that Mr. Kountz, for instance, who was active in NRA hearings, was seeking to build up an organization.

3644

Q. And was it also brought to your attention that that organization became a national one? A. No.

Q. You didn't know that? A. No.

Q. All right. Was it brought to your attention that any other labor organization was starting to organize in your system at that time? A. No.

Q. Now, did the employee representation plan come into existence after the Independent Brotherhood of Utility Employees started organization? A. I don't

S. M. 1452

3645

recall. So far as the company was concerned, it wasn't certainly related to it at all.

Q. Just what do you mean by that, Mr. Carlisle? A. Why, when the NRA was created, I happened to be the chairman of the committee of the power industry that worked on the Code. Judge Ransom was the counsel, and the company representation plan grew out of the NRA procedure and growth. It had no relation to his quite obscure and small group that were seeking, through Kountz, to do something.

Q. In other words, the company plan grew out of the NRA efforts? A. That's right.

3646

Floyd L. Carlisle—For Respondents—Cross

Q. But the Independent organization had no growth through those efforts. It was something separate and apart from that? A. Well, we knew very little of it, and I know practically nothing of what it did.

Q. Now, after the employee representation plan came into existence, it continued throughout the system until it was dissolved in April of 1937? A. I think that is correct.

3647

Q. Yes. Was it brought to your attention at any time during the period of the life of the plan that any other labor organization was coming into the system for

S. M. 1453

purposes of organization? A. Oh, yes, one of the government people in the NRA days, Mr. Brunizette, of the International Electrical Workers, he many times discussed our entering into a contract, asked us to do it.

Q. When was that, specifically, do you recall? A. I should say in '34 or '35.

S. M. 1454

3648

Q. Yes. On behalf of what employees? A. On behalf of his organizaion.

Q. Yes, but on behalf of what employees within that organization? A. Why, I don't know what employees were members of his organization. We had relations with the No. 3 local of the International Brotherhood of Electrical Workers when we took over the New York Central Electric operations, their people were all members of the I.B.E.W.

Q. What year was that? A. That was in '36, I think.

Q. And your discussions with this gentleman from the N.R.A. never got to the point where you considered proposals for collective agreement? A. No.

Q. They were discussions? A. That's right.

Floyd L. Carlisle—For Respondents—Cross

3649

Q. Now, what brought to your attention that any other labor organization during that period was coming into the system for organization purposes? A. Why this organization that Kuntz was the head of. I don't recall whether there was any correspondence with them or not, but they appeared before most of the hearings, before the Public Service Commission and took a position that they were entitled to appear. They never went beyond that particularly.

S. M. 1455

3650

Q. When was it first brought to your attention that the I.B.E.W. was organized—was organizing your employees? A. Why the I.B.E.W. contact was at the time of the opening of the discussions with Mr. Tracy.

Q. Was that then in April, 1937? A. Correct.

Q. Now do you recall that being the time when it was first brought to your attention that the I.B.E.W. was organizing—what the exact date was? A. Why it was somewhere during the week preceding the 19th I should say.

Q. Now, before the week preceding April 19th, was it brought to your attention that any other labor organization was organizing within your system? A. Why, I believe that they were circulating pamphlets that were distributed at the doors and they had more or less—they had more or less newspaper releases. The year before my recollection is that they gave newspaper releases that they were going to shut down the Hudson Avenue station on a given date and we knew that such an organization was in existence, yes.

3651

Q. Well, you have not yet named what organization. A. Well, they changed their name two or three times. Mr. Count's organization was just beginning.

Q. Yes. You are referring alone to the Independent

3652

Floyd L. Carlisle—For Respondents—Cross

S. M. 1456

Brotherhood of Utility Employees? A. I don't recall the successors names, if they changed their names. Mr. Wersing appeared before the Public Service Commission in consolidation proceedings. I assume that that organization was the organization that you refer to.

3653

Q. Well, before April 19, 1937, aside from the Independent Brotherhood of Utility Employees, was it brought to your attention that another labor organization was in the field; was it brought to your attention that the United Electrical and Radio Workers affiliated with the C.I.O. was organizing in your system? A. Well, I read in the newspapers that Mr. Cary was seeking to build up membership in that organization.

Q. When was that brought to your attention? A. Why I should say sometime in the spring of 1937.

Q. It was at a time preceding April 19th, is that right? A. That's right, yes.

Q. And was it in the month of March, 1937? A. Well, I don't recall, it was some time in the later winter or spring.

3654

Q. Now, was that the first information that you received regarding that organization? A. Why, I don't recall any communication, there may have been communications that I don't recall.

S. M. 1457

Q. Were any communications from this organization brought to your attention? A. Well, if they were addressed to me I certainly got them. If they were addressed to others, I probably saw them.

Q. Do you have a recollection of having seen such communications? A. I don't know. Frankly I don't recall the letter from Mr. Cary or anybody in the organization, but there might have been one.

Floyd L. Carlisle—For Respondents—Cross

3655

Q. And when you first heard of the intention of Mr. Cary to organize within your system the employee representation plan was still in existence? A. It was.

Q. But you had not contemplated at that time a dissolution or up to that time a dissolution of that plan, is that right? A. The contemplated dissolution of that plan came after the Supreme Court decision in the Wagner Labor Act.

Q. And that was then in April 1937? A. That is correct.

Q. Now your first communication with Mr. Tracy was on April 19th, do you recall when it was that the contract with Mr. Tracy was executed? 3656

Judge Ransom: What do you mean now, are you referring to these collective bargaining—

Mr. Moscovitz: The collective bargaining agreements.

S. M. 1458

The Witness: There was nothing in writing until my letter of the 20th.

Q. (By Mr. Moscovitz) Yes, and that then was a letter of recognition, is that right? A. That's right. 3657

Q. Yes, so for the first time, April 19th was the first time that you had heard from the I.B.E.W. officials? A. Oh, no, I had had talks with Mr. Tracy prior to that time.

Q. All right, now, when had you spoken with Mr. Tracy prior to April 19th? A. I met Mr. Tracy twice prior to the 19th of April, I should say it was within ten days prior to that time.

Q. You would say then the first week of April? A. Approximately that, I don't think it was prior to the first of April.

3558

Floyd L. Carlisle—For Respondents—Cross

Q. And did you and Mr. Tracy— A. It was after the Wagner Labor decision I am sure of that.

Q. Well, the Wagner Labor decision, as I recall it, came down the 12th of April. A. Well, I should say it was following that.

Q. It was following that? A. Yes.

Q. And did you meet with Mr. Tracy alone? A. Yes, I talked with Mr. Tracy alone the first time that I met him.

3659 S. M. 1459

Q. And what was the purpose of that conference? A. Mr. Tracy had requested it, he stated that with the Wagner Labor decision he hoped that the company now would give consideration to a contract with a National organization. I spent several hours discussing the type and nature of an agreement. I stated that the operations of the Public Utility, Electric and Gas and Steam Utility in a city like New York, that any agreement would have to be on the basis of no strikes, no sit-downs, no interruption of operations, and machinery for complete arbitration and settlement of grievances.

3660

He stated that he would enter into such an agreement and showed me various agreements that he had with other Public Utilities throughout the country that contained such provisions. I took those. I don't know that he had the actual contracts but within a period I saw contracts with the Georgia Power Company and the various other public utility companies and the basis of the contract that would protect the company from interruptions of service and its consumers from interruptions of service, and provided a complete method of settling grievances. I regarded that as of basic importance in the matter and we also discussed our relations with the International, with the #3 Local in New York. As

you know that is a relationship of long standing and very great importance in our operations. I felt then,

S. M. 1460

and I feel now, that it was the logical thing for us to make a contract with the International Brotherhood of Electrical Workers and when the terms of the grievances and the interruptions of service and hours and so on—we discussed everything but wages. In reference to wages, he said and I said that that was a matter that had got to be worked out by committees of men and it was left to be worked out by committees of men. Long discussions were had with committees of men and the contract of June 15th was the evolution of those.

3662

Q. Now, that then was the first conference, and when was the next conference before the 19th or 20th of April?

A. I don't recollect whether it was one or two days before, it was very close to it.

Q. One or two days before the 19th or 20th? A. Yes.

Q. And was that too with Mr. Tracy alone? A. Well, I am not sure whether Mr. Low might have been present.

Q. Who is Mr. Low? A. Mr. Low is the executive vice president of the Brooklyn Edison Company.

3663

Q. And what was the purpose of that conference with Mr. Tracy? A. That was to further go into the details of clauses that would be inserted in a contract.

S. M. 1461

Q. And at either one of those conferences was there any discussion of membership? A. Of what?

Q. Of the I.B.E.W. in your system? A. No.

Q. Have you agreed at either one of those conference that a contract would be executed? A. No, the

3664

Floyd L. Carlisle—For Respondents—Cross

understanding was that we would enter into collective bargaining with them on the basis other than wages that we had discussed. The question of wages would be taken up with committees of men. That presumed that those committees would come into existence. I think Mr. Tracy had, following the first conferences, a group of organizers in New York, #3 local had its organizers to work.

3665

Q. Was it then that you discussed this matter and held upon the question of the execution of the contract until such time as Mr. Tracy did more organizational work in your system? A. Oh, no, no, the letter of April 20th was the action of the company to recognize the International Brotherhood as the collective bargaining agency.

Q. And that was without consideration or discussion of membership, is that right? A. Well, we knew that they had some members, they had the men that had been taken over from the New York Central operations, there were some men who had always had cards in the

S. M. 1462

3666

International Brotherhood of Electrical Workers.

Q. And was your willingness to execute these contracts based on your own information regarding this membership? A. Why, it was very general information, we knew that the New York Central belonged to the International Brotherhood of Electrical Workers, we knew that certain people in the construction division that had come to the company or gone out of it in construction work were members of the International Brotherhood.

Q. And this information, you say, was general information about which you were advised? A. There was no counting of noses as to how many persons were

then members of the International Brotherhood, if that's what you mean.

Q. That's right. Well, was there a submission or execution of the question of the number of employees who would be covered by this contract? A. Oh, yes, that was very clearly discussed.

Q. That was? A. The contract provided that it was only to cover those that were members. We having entered into a collective bargaining arrangement, presumably organization work, would proceed.

Q. At the time you recognized the I.B.E.W., were there locals of the I.B.E.W. in existence in the system?

3668

A. I knew of none.

S. M. 1463

Q. At the time of the execution of the contract, such locals were in existence? Is that right? A. They were.

Q. So that that organizational work took place after your initial recognition? A. That is true.

Q. And can you tell me when the first contract was executed? A. I don't recall the date. I think perhaps four or five days prior to June 15th, the June 15th contract.

3669

Judge Ransom: Well, I think the dates were different dates as to different companies.

Q. Can you tell me when the Consolidated Edison Company's contract was executed? A. Well, I assume that that was executed on the 15th. Am I wrong in that? I went away on the 18th of June and it was executed prior to that time, as I recall. I did not sign it.

Judge Ransom: My impression is that it was before the 15th.

The Witness: This copy that I have here—

3670

Floyd L. Carlisle—For Respondents—Cross

Q. (By Mr. Moscovitz) Do you recall when the first contract was executed? A. I do not recall. They were within two or three days of each other, as I remember.

Q. Were there separate contracts executed for each

S. M. 1464

one of the respondent companies? A. There were.

Q. And were those separate contracts executed within a day or two of each other? A. Well, within a very short interval.

3671

Q. Yes. A. The only difference that arose, the New York Edison Local that covered the Electrical Workers, the discussion led to a change in the character of the general wage increase. Prior to that time it was, as I recollect—I have been away seventeen days, and my mind isn't quite clear, but there was an alteration made, after discussion had been had, the effect of which was to increase at a greater rate than five per cent people who were under \$40.00 a week, and that alteration was then made effective over all the contracts.

Q. Were the contracts then all executed in June? A. Oh, yes.

3672

Q. And were they all executed in June in the week preceding the 15th of June? A. I think so.

Q. Or were there some executed after June 15th?

A. Well, I don't know. I went away on the 18th—

Judge Ransom: I find, for example, that the New York and Queens Electric Light and Power Company agreement with Local Union B-839, was apparently executed on June 1st. The West-

S. M. 1465

chester and Yonkers agreements were evidently executed May 28th. The Brooklyn Edison agreement was

executed May 28th. I think these agreements show that with respect to those which had been executed at the end of May, or early in June, that after the conclusion of negotiations with the committee of electric employees of the Consolidated Edison, and the change which they brought about, riders were attached to the agreement that had already been executed, making the same provision operative. For example, I have before me the Brooklyn Edison agreement which was signed on May 28th but that has to it a rider, two riders, which were executed June 14th. Now, as to Brooklyn Edison, I assume that they were the same riders that were attached in the final signature to the Consolidated Edison agreement as of June 14th or 15th.

3674

Q. (By Mr. Moscovitz) Now, at the time those contracts were executed, the Locals of the I.B.E.W. were in existence and signatories to the respective contracts. Is that right? A. That's right.

Q. And when you last met with Mr. Tracy, before your letter of recognition of April 20th, it was understood, was it not, that after he organized his men and secured local set-ups, that you would then sit down for the purpose of executing the necessary contracts? A. All questions of wages were to await the appointment of committees, the creation of locals, and that is what happened.

3675

S. M. 1466

Q. Yes. And did you meet again with Mr. Tracy after April 19th? A. Yes.

Q. Did you meet with him for the purpose of executing these contracts? A. No. There were further changes made in a general character. One as I recollect covered vacations. He stated that the employees wanted that more specific, or, I forget what the details were, but they were details of the contract.

3676

Floyd L. Carlisle—For Respondents—Cross

Q. Did you handle all the negotiations yourself personally? A. Why, I sat in, I think, for every important discussion.

Q. And with whom did you hold discussions regarding the terms of the contracts? A. Wages?

Q. Yes. A. Well, I don't remember the name of each—

Q. Were they committees of employees? A. I did not sit in with the committees other than those in the Consolidated Edison Electric and Gas, principally electric. That was the biggest one.

Q. Now, were they, were those meetings with committees of employees? A. Those were meetings of some dozen or more people whom I understood had been appointed a committee by the local that had been chartered.

S. M. 1467

Q. Yes, but was it a committee of employees? A. There was no one there, as I recall, except employees. I may be wrong on that. I think I am wrong on that. Employees who had become full-paid representatives of their locals were there.

3678

Q. In other words, employees who had become organizers for the I.B.E.W.? A. Well, the great bulk of the committee were employees, but there may have been, probably were, men who were no longer on our payroll but who were working for the I.B.E.W., who had formerly been on our payroll.

Q. Yes, and do you recall specifically the names of any of those employees? A. Well, I assume that these names signed on the contracts—if I had the electrical contract, I could tell you.

(Counsel hands witness electrical contract.)

A. Well, Mr. Delvac, for instance, as I understood it, was

Floyd L. Carlisle—For Respondents—Cross

3679

the chairman of a committee of local No. B-829, which was the electric local, for the Consolidated Edison Company and he certainly was there.

Q. Was Mr. Ganley there? A. I think Mr. Ganley was there on one occasion. He was not there on all occasions.

Q. Mr. Parker? A. Well, Mr. Parker did not sit in with the meetings of the electric local. He was in the

S. M. 1468

gas local.

3680

Q. Were the employees who attended these conferences with you persons who had formerly been officers of the E.R.P.? A. Why, some of them were, I am sure. I don't know that all of them were.

Q. Well, as a matter of fact, weren't they all men who had formerly acted as general councilmen of the E.R.P.? A. Well, I wouldn't know that.

Q. Mr. Ganley, with whom you met on these questions, was formerly chairman of the general council, was he not?

Judge Ransom: Mr. Ganley was not one of the signers.

3681

The Witness: Mr. Ganley was not on the committee that we negotiated with.

Q. (By Mr. Moscovitz) In what meetings did Mr. Ganley sit? A. Mr. Ganley came into one meeting.

Q. One meeting? A. Yes.

Q. Do you recall what meeting that was? A. Why, that was a meeting at which the discussion was giving a greater increase to the men in the lower rates of pay and a less increase to the men in the higher rates of pay. He was in there during a portion, at least, of that discussion.

Q. And in consideration of what contract was that, for what company? A. New York Edison Electric.

2682

Floyd L. Carlisle—For Respondents—Cross

S. M. 1469

Q. Mr. Ganley was formerly chairman of the general council of the E.R.P., was he not? A. Why that was the meeting at which the discussion was giving a greater increase to the men in the lower rates of pay, and a less increase to the men in the higher rates of pay. He was in there during a portion, at least, of that discussion.

Q. And in consideration of what contract was that, for what company? A. New York Edison Electric.

3683

Q. Mr. Ganley was formerly chairman of the general council of the E.R.P., was he not? A. Yes.

Q. And he is now a general organizer for the I.B. E.W., is he not? A. I do not know that.

Q. Do you know the personnel of any of the other committees with whom you met? A. I do not.

Q. During this period of time? A. No, I cannot give you the names now.

Judge Ransom: I may say that I expect to offer in evidence each of these other agreements, and each of them shows the names of the committee chosen by the employees to sign and negotiate.

3684

Mr. Moscovitz: Do you want to put them in now?

S. M. 1470

Judge Ransom: I have here all except the Consolidated Subway. If you wish, I will offer them now, then you may have them.

I offer in evidence the memorandum of agreement between the Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, through Local Union B-830.

Floyd L. Carlisle—For Respondents—Cross**3685**

(Document referred to marked respondent's exhibit #17 for identification, Witness Carlisle)

Judge Ransom: I offer the same memorandum agreement between Consolidated Edison Company of New York, Inc. and the International Brotherhood of Electrical Workers, through Local B-829.

(Document referred to marked respondent's exhibit #18, witness Carlisle)

Judge Ransom: The agreement between Brooklyn Edison and Local Union B-825, effective May 28th, 1937.

3686

(Document referred to marked respondent's exhibit #19 for identification, Witness Carlisle)

Judge Ransom: The agreement between New York and Queens Electric Light and Power and Local B-839, effective June 1st, 1937.

(Document referred to marked respondent's exhibit #20 for identification, Witness Carlisle)

Judge Ransom: The agreement between West-

S. M. 1471**3687**

chester Lighting Company and the Yonkers Light and Power Company and Local B-832, effective May 28th, 1937.

(Document referred to marked respondent's exhibit #21 for identification, Witness Carlisle)

Judge Ransom: The memorandum agreement between New York Steam Corporation and the International Brotherhood of Electric Workers through Local B-826, effective June 16, 1937

(Document referred to marked respondent's exhibit #22 for identification, Witness Carlisle)

3688

Floyd L. Carlisle—For Respondents—Cross

Judge Ransom: I shall ask leave to supply and mark later the agreement which is not here, of which I have copies, I think, in the office, the one with the Consolidated Subway Company.

Mr. Moscovitz: May I have, Mr. Examiner, a five minute recess for looking over these contracts?

Trial Examiner Gates: Leave is granted to introduce later the contract in question, meantime these are received in evidence.

3689

(Documents referred to received in evidence marked respectively respondents #17 to #22 inclusive, Witness Carlisle)

(Whereupon a five minute recess was taken)

AFTER RECESS

Q. (By Mr. Moscovitz) Now, as I understand it, Mr. Carlisle, these negotiations after your letter of recogni-

S. M. 1472

3690

tion and before the contracts were executed, were carried on in the respective companies by the committees, negotiated by committees of employees from those companies? A. From those companies and from the locals of those companies, as I understand it.

Q. I also understand that each company has a separate local? A. That is correct, and the Consolidated Edison Company has two, one covering gas employees and the other the electric.

Judge Ransom: And in Westchester, the Westchester Lighting Company and in Yonkers, the Electric Light and Power Company, their employees together have one local.

Floyd L. Carlisle—For Respondents—Cross

3691

Q. (By Mr. Moscovitz) Do you recall whether or not any officers of the I.B.E.W. sat with the committees of employees during these negotiations? A. Why I think on one occasion Mr. Tracy sat in.

Q. And do you recall in what company that was? A. I think it was a group of committeemen from more than one company, I think the Consolidated Edison Electric was there, I think there was somebody from Brooklyn, somebody from Queens, I don't believe that every company was represented, but I am not sure.

Q. And did you attend that conference? A. I did.

3692

Q. Do you recall when it was, approximately? A. Well, I would think it was prior to the 28th of May.

S. M. 1473

Q. Immediately prior to the 28th of May? A. Well, it may have been a week or two prior to that, I imagine ten days prior to it.

Q. Was that meeting for the purpose of discussing wage arrangements? A. Yes.

Q. All these meetings were for that same purpose? A. Yes, but there were some changes made in the wording of the clauses that dealt with pensions and vacations and sick benefits and so on.

3693

Q. When the contracts were executed, were they executed in the presence of yourself and the negotiating committees? A. I wasn't present when they were executed; they were executed by the officers in the different companies other than myself.

Q. And with the respective local union officers, is that right? A. Well, committees or officers, I don't know which.

Q. Now, in the Consolidated Edison Company agreement, Local B-830, which became effective June 15th, 1937, you had signatures of the local unions by George

3694

Floyd L. Carlisle—For Respondents—Cross

T. Parker and he was formerly a general councilman of the E.R.P., was he not? A. Yes.

Q. And Joseph A. Fisher, he was also formerly a general councilman of the E.R.P.? A. I don't know that of my own knowledge.

S. M. 1474

Q. Do you know about Frederick G. Buchner? A. I don't know.

3695

Q. So that you are not entirely familiar with what offices these employees may have held in the E.R.P.? A. That is right.

Q. And that would go for the signatories to the other agreements? A. That's right, that is true.

Mr. Ransom: There is a list of those general council members in evidence.

Mr. Moscovitz: That is right.

Judge Ransom: So you can see in how few instances the committees were the former general councilman.

3696

Q. (By Mr. Moscovitz) Do you know, Mr. Carlisle, whether or not these officers of the local with whom you were negotiating were still on your payroll at that time? A. I don't know.

Q. Now, will you tell us how Mr. Tracy first came to your attention? A. Well, as I recollect it, Mr. Brunaset had sent me a telegram some few weeks before.

Q. Who? A. Brunaset, he is the vice president, I think, of the International Brotherhood of Electrical Workers.

S. M. 1475

Q. Had you known him before? A. Yes. I have seen him many, many times.

Floyd L. Carlisle—For Respondents—Cross

3697

Q. Yes. A. He came to New York, I did not see him. I was busy with something else and an arrangement was made whereby Mr. Tracy would come over and I met him.

Q. And when did you hear from Mr. Brunaset? A. I don't recall, I think he either tried to get me on the telephone, I think that was the method of communication, I don't think he telegraphed me.

Q. You don't recall when it was? A. My best recollection would be it was perhaps a couple of weeks or three weeks prior to the time that I first met Mr. Tracy. 3698

Q. And it was he then that arranged your meeting between yourself and Mr. Tracy? A. Well, I met Mr. Tracy at Mr. Low's apartment on Park Avenue.

Q. And Mr. Low is the executive vice president of the company? A. Brooklyn Edison.

Q. Brooklyn Edison Company? A. Yes.

Q. Was it at that Park Avenue address that the first conference took place to which you have already referred? A. Yes.

Q. And was the second conference held at the same place? A. Yes.

S. M. 1476

3699

Q. And were there any other conferences at the same address? A. Well, I met Mr. Tracy once or twice at his room at the Roosevelt Hotel afterwards and he came once into the building and met with us.

Q. And this was all before the 19th of April? A. No, no, I only had two meetings with Mr. Tracy prior to that time.

Q. When were these other meetings? A. They were subsequent.

Q. Subsequent? A. Yes.

Q. Now, the contracts which were executed you say

3700

Floyd L. Carlisle—For Respondents—Cross

provided that employees who are members of the I.B.E.W. shall be represented by the I.B.E.W., is that right? A. Well, the contract speaks for itself.

Q. Well, as I recall you testified before, despite the fact that the contract speaks for itself, that the contract covered only members of the I.B.E.W.? A. The contract provides in substance that it is applicable to and applies, covers the men who are members of the I.B.E.W.

Q. And that it also does not close the door of any individual employee or group of employees from submit-

3701

S. M. 1477

ting grievances to management? A. My understanding is very definite and clear so far as the collective bargaining agreement is concerned. It is executed with the I.B.E.W. Now, grievances that arise with members of the I.B.E.W. are presented under the terms of this contract. If there is an employee who is not a member of the I.B.E.W. and he has some grievance that he wishes to discuss with the management we will discuss it with him but it is related to his individual affairs and not in connection with any other organization that he may be a member of.

3702

Q. So that the company in the contract permits the employees to take grievances up with management? A. As individuals.

Q. As individuals? A. Yes.

Q. May they take grievances up with management as members of a different labor organization? A. No.

S. M. 1478

Q. And doesn't the contract prohibit the activity, the representative activity, of other labor organizations? A. The contract, I have the unfortunate situation of having been a lawyer myself, and I would say, that the contract speaks for itself. It is very clear.

Q. Yes. Well, you do say, however, that employees cannot be represented by other labor organizations in the submission of grievances. Now, do you also say that other employees cannot be represented, if they so desire, by a different labor organization? A. Why, we have nothing in this contract that prohibits a man from joining any labor organization or not, as he wants. However, as I understand collective bargaining, as I understand the law of the state under which we are operating, this is our collective bargaining contract, and no other.

Q. I see. A. But an individual can't present any grievance that he pleases. 3704

Q. Yes. And that, despite the fact that the contract only speaks for employees who belong to a labor organization and not for a majority of the employees? A. We have entered into what I regard as a completely, all-embracing, collective bargaining arrangement, and this is the only one that we concentrate. Now, the State law is very clear in its provision that a majority rules.

S. M. 1479

Q. Yes, and— A. Within those ranges, I think you understand what my point of view is. 3705

Q. Yes, but the State law and the Federal law provide that the majority rules. Your contract provides that only employees who belong to the particular labor organization shall be represented? A. That's true.

Q. Yes. And so that would bar, under your understanding of the situation, the majority of employees from being represented if the I.B.E.W. only represented a minority? A. No, I wouldn't say that, but I would say that we have entered into this agreement and we consider it a complete compliance with the spirit of the law.

Q. Despite the fact that the contract has no majority provision and despite the fact that the I.B.E.W. at the

3706

Floyd L. Carlisle—For Respondents—Cross

time of the execution of the contract may have represented only a minority? A. Well, I don't know of my own knowledge at the time these contracts were executed, how many members they had. I believe that they had a majority, but I don't know.

Q. Was there any submission to you of evidence of that fact? A. No.

Q. Before the contract was executed? A. No.

S. M. 1480

3707

Q. And it was not until after the contracts were executed that there was submitted to you evidence of membership? A. Why, there were figures given to us. Mr. Tracy issued a statement in which he stated the number of members in the I.B.E.W. I saw those figures. I have no doubt that he told me on one or two occasions when I might have met him the number of members that they had.

Q. And do you recall when it was that it was brought to your attention that this membership roll was brought to your attention? A. I would assume that it was somewhere in the middle of May, perhaps.

3708

Q. And it was on the basis of what you might have heard in this regard that the contract was executed for all of the employees? A. Oh, no. When we wrote the letter to Mr. Tracy that we would engage in collective bargaining, there was no stipulation that they had to have any number of members. That was an organization that was clearly within the contemplation of the law and we signed it.

Q. Yes. So that— A. The fact that the wages were not agreed upon, neither Mr. Tracy nor myself nor any of the management wanted to execute the contract in reference to wages until committees had been created

S. M. 1481

and the thing was truly representative of what the men wanted, what they were dealing for.

Q. So you say it was in June of 1937, the 29th of June, that you were furnished by the I.B.E.W. with a statement of its membership in your companies?

Judge Ransom: He hadn't said that is the only time.

Mr. Moscovitz: Well, we will see. I understand Mr. Carlisle testified that he had heard of the membership roll.

3710

Judge Ransom: It was published in the paper.

Mr. Moscovitz: Yes, but I am surprised that an important official of an important system would execute an agreement in such a responsible situation on a mere statement that he read in the newspaper, so I would appreciate a little more inquiry.

Q. (By Mr. Moscovitz) Then, it was in June of 1937, on the 29th, that you did receive a statement of membership from the I.B.E.W. Is that right, Mr. Carlisle? A. Well, I wasn't here then. That statement was handed to some one within the company and was prepared by the I.B.E.W.

3711

Q. Now, had you received any other statement from them before that date? A. I don't recollect that we had received any formal statement, but Mr. Tracy had stated that there were so many members in this company and that company and the other company, and I assume that that was none of our business.

S. M. 1482

Q. Yes. And, well, did Mr. Tracy say to you that he represented a majority of your employees at the time the contract was executed? A. I did not discuss these

3712 *Floyd L. Carlisle—For Respondents—Cross*

contracts. I did not see Mr. Tracy within probably ten days prior to their execution. I don't know what was said.

Q. Well, at the time you discussed with Mr. Tracy these collective agreement arrangements, did he make any statement to you on the question of whether or not his organization represented the majority of your employees? A. Why, he told me, I am quite sure, that his organization did, as far back as the first of June, represent a majority of the employees in each company, some greater in one, some ratios differed.

3713 Q. That being the case, Mr. Carlisle, why was it that the contract does not speak for the majority of the employees and only speaks for such employees as Mr. Tracy represents? A. Why, this is a very usual, very normal contract. Unless the closed shop is put into a labor contract, anything that provides for a ratio to be maintained is subject to change at any time.

Q. But under both the State Act and the Federal Act, Mr. Carlisle, contracts that you have executed, despite what you have stated, would permit, would they not, other labor organizations representing the majority to come to you and ask you for a collective agreement? A.

3714 S. M. 1483

Why, if it became important as to whether or no a given labor organization represented a majority, it would come up at some time when that question naturally was important.

Q. I see. So that it was not considered as an important point at the time of the execution of these contracts? A. Why, it was not a controlling reason in the entering into collective bargaining arrangements.

Q. Now, you testified, Mr. Carlisle, that as far back as June 1st, you were notified that the authorization rep-

resented a majority of the employees. Is that right? A. That is my recollection.

Q. Yes. And you also testified that when you recognized the I.B.E.W. in April, that its organizational activity and the setting up of its locals and so on, was yet to be finished. A. That is right.

Q. And that no locals were in existence? A. That is right.

Q. Now, were you in the period of time from the recognition of the I.B.E.W. until June 1st being advised of the progress of the organization in the respective companies? A. I think I saw Mr. Tracy three times during that period, I had no doubt, I don't clearly recollect, that he stated the number of members that they had, they would open offices, they were very active and I did not

3716

S. M. 1484

get reports other than through him.

Q. And were you advised of the fact that the I.B.E.W. had set up offices in the Salmon Building? A. Well, I did not know the place of their office. Mr. Tracy told me I think of the number of offices that had been opened.

Q. And were any of these offices that were set up in offices which had been previously utilized by the Consolidated Edison Company? A. I don't think so, I don't know of any, maybe outside of the building, and I don't know now where they would have been.

3717

Q. Were you advised that during the period between April 19th and June 1st that organizational activity was in progress in the respective companies to which you have been referring? A. Why, of course.

Q. Did you know, too, that the former general councilmen of the E.R.P. was engaged in this activity? A. I did not know that.

Q. Did you know that these general councilmen en-

3718

Floyd L. Carlisle—For Respondents—Cross

gaged in this activity were being supported under the system which was in existence under the E.R.P. by the company? A. Well, I am very sure of that, that so far as the company was concerned, any clean-up of the employees representation plan was a clean-up of that plan and had no relation to the work of the I.B.E.W., or the

S. M. 1485

work that the I.B.E.W. might be doing.

3719

Q. Did you know that the I.B.E.W. had set up desks within the plants of the respective companies for the purpose of securing membership and soliciting membership and receiving dues? A. I know nothing of the kind.

Q. You did not know that those activities were being engaged in during the period of time to which I have referred?

Judge Ransom: I object to that question, there is slight claim of such thing, there is a claim of one day at 4 Irving Place and one day up in the Hell Gate Station.

3720

Mr. Moscovitz: Well, my recollection is, Judge Ransom, that there is more evidence than that in the record and I am not sure the record speaks for itself.

Trial Examiner Gates: The record may speak for itself.

The Witness: I don't know.

Trial Examiner Gates: It may stand.

Q. (By Mr. Moscovitz) Did you, Mr. Carlisle, after the execution of these contracts, receive word from the United Electrical Radio Workers? A. You mean, after June 5th?

Q. Yes. A. No, I sailed on the 18th of June and got back yesterday.

Q. Did you, then, before you sailed, at any time re-

S. M. 1486

ceive word from the U.E.R.W.? A. I did not—

Judge Ransom: You mean after the signing of the contract?

The Witness: After the signing of the contract?

Mr. Moscovitz: That's right.

The Witness: Why, I have no recollection of that, I don't think I did. 3722

Q. (By Mr. Moscovitz) All right, did you after recognition of the I.B.E.W. on the 20th of April receive word from the U.E.R.W.? A. Yes.

Q. Do you recall when it was? A. When it was?

Q. Yes. A. Well, shortly after the 20th of April.

Q. And what was this word? A. It was a letter, I don't know, I don't recall its term, but asking for a conference.

Q. And do you recall who it was signed by? A. Well, I think it was signed by the secretary of the organization and not by Mr. Carey, but I am not sure. 3723

Q. By Julius Amsbach, the general secretary? A. I don't recollect the name, but it was signed by some officer.

S. M. 1487

Q. And the request was for a conference for the purpose of considering a contract? A. Yes, sir, that was its intent.

Q. And what did you do regarding that letter? A. I didn't answer it.

Q. And did you after that receive another communication from the U.E.R.W.? A. Well, I don't recollect it now.

3724

Floyd L. Carlisle—For Respondents—Cross

Q. Weren't other registered letters from the U.E. R.W. to you which you did not open and which you did not accept, rather? A. Well, I am sure I opened every letter that came by registered-mail, but I did not answer, I did not communicate with them.

Q. That letter from the C.I.O. was received when, in relation to the time when you recognized the I.B.E.W.? A. Well, to my recollection, don't hold me to this, my recollection would be within 48 hours, it might have been less and it might have been longer.

3725

Q. And that was at the time that you did not know—strike it out, please. Had you outside of the statement made by Mr. Carey, the president of the U.E.R.W., which as I recall you testified was before April 19, 1937, and this letter from the C.I.O., which you did not answer, receive any other communication? A. Well, I don't remember, I may have.

S. M. 1488

Q. Did you receive any communication before the 19th of April? A. I don't remember.

3726

Q. And the only recollection you have is of having read Mr. Carey's statement that he was trying to organize the system? A. Yes.

Q. And it was following that, that these developments concerning which you have testified took place? A. Well, my reading of Mr. Carey's activities, I don't relate them to this matter at all. Our decision to do what we did was entirely specifically related to the decision of the United States Supreme Court in the Wagner Act, and when that decision came down we then discussed the matter with our people and decided that we were going to certainly—could not in view of the imminent passage of the State Act go along with the plan that had been in existence since the NRA days.

Q. Well, all the decision of the United States Supreme Court did for you, Mr. Carlisle, as I understand it, was to cause the important decision to dissolve or do away with employee representation plan? A. That is true, but to carry on collective bargaining after that required something beyond, something new.

Q. And it required there, consistent with the spirit of the decision which you have referred to, a recognition of the free-expression by your employees and their desire

S. M. 1489

3728

to be organized and represented, isn't that so? A. Well, the State Act which we read with great care and which we believe to be the act under which we would operate defined labor organizations. In its definition I saw no possible continuation of the employee representation plan, or reconstruction of the labor organization under that act from that plan, or our right to participate in any degree in the formation of any plan or any suggestion of any kind.

We therefore entered into this arrangement which we did, with an organization which clearly is legal under the Act.

3729

* Q. And the Federal Act also has similar provisions, doesn't it? A. Yes.

Q. And if it was your desire to subscribe to the spirit of the decision in the Supreme Court, then the employees representation plan should have been eliminated some time before, isn't that so, because after all it was the Federal Act that was before the United States Supreme Court? A. Let me put it this way: The employee representation plan had been set up by the employees, it had been in operation for a period of three years. The amount of thought that we gave to it in view of the large number of employees was very small. We gave them

3730

Floyd L. Carlisle—For Respondents—Cross

S. M. 1490

room space, we gave them such stenographic help as they needed, where elections were held and printing was necessary, we paid for that. I never regarded that as being a thing that amounted to in any degree to coercion or subsidy or otherwise. When the Wagner Labor decision was made and the Doyle Act which was to be its companion act and the administration at Washington urged the states to pass acts that would cover cases where people were not under the National Act, we advised them to act.

3731

Q. And the Act was the removal of the employee representation plan? A. That's right.

Q. And the immediate substitution therefor of this other labor organization which you now are in contractual relationship with? A. It was not a substitution for. We did not know how many members would join the I.B.E.W. There was no question about that. They were an organization purely within the law. We had had important relationships with the No. 3 local in all the work which is very huge, that we did in the change-over of consumer premises, we had long standing relationships with them.

3732

Q. Were those relationships contractual? A. They were relations which had the form of exchange of letters. Our agreement in substance was this: That none

S. M. 1491

of our men would do work on the premises of a customer where it was a change-over of anything for the purpose of going off from the D.C. distribution system to the alternating current system. That ran into many millions of dollars a year.

Judge Ransom: I will produce a copy of that agreement, if you wish.

Floyd L. Carlisle—For Respondents—Cross

3733

The Witness: We would have to continue that in the future.

Q. (By Mr. Moscovitz) That was not a collective bargaining contract, was it? A. No, but it was a very normal and natural thing.

Q. It had something to do with construction, didn't it? A. Well, but the time between where the company is spending normally \$40,000,000. a year in expansion program, there has been a policy of changing over the apparatus on consumer premises. There was a deadline agreed to across which they would not go. There was also an understanding that that constituted a workable arrangement between the Edison Company and the I.B.E.W., when it came to a situation where a major change had to be made, why—

3734

Q. Yes. Were these— A. I had no other thought in my mind but what the logical, natural and proper arrangement was to make the arrangement with the I.B.E.W.

S. M. 1492

Q. Yes. But this local No. 3 arrangement, so that I can be clear in my mind, was not a collective bargaining arrangement. It was simply a construction arrangement so there wouldn't be any— A. It was an agreement whereby we would not put our own men into work that otherwise would be very natural and very logical for us to do.

3735

Q. Yes. A. To that extent it was a recognition, and a very decided recognition.

Q. Was it a relationship where the I.B.E.W. was representing your employees? A. No.

Q. They acted as what? A. No, but it had the effect of work that the company paid for being done by Local No. 3.

3736

Floyd L. Carlisle—For Respondents—Redirect

Q. Yes. That's all.

REDIRECT EXAMINATION:

Q. (By Judge Ransom) Mr. Carlisle, you spoke about taking over New York Central employees in 1936, employees who were members of the American Federation of Labor in the I.B.E.W. Did your company or group of companies in the latter part of 1936 acquire two generating stations from the New York Central Railroad? A. We did.

3737

S. M. 1493

Q. One of them by outright purchase being the so-called Glenwood Station? A. We purchased the station in Yonkers.

Q. Yes. And the other you leased? A. Yes.

Q. For operation? A. That is correct.

Q. And in those acquisitions of generating stations, did you take over the employees? A. We did.

Q. And as you understood the matter, were those employees of the New York Central Railroad Company whom you took over in their two generating stations members of the I.B.E.W.? A. That is what we were told, and that is what we understood.

3738

Q. You were asked about the collective bargaining situation in this group of companies prior to 1933? A. Yes.

Q. Do you know to what extent in generating stations and the like, there were systems of grievance committees operative for collective bargaining purposes? A. You mean under the—

Q. Before there was any E.R.P.? A. I knew there were machinery that presented grievances through committees, but that was before my time.

Q. Was the willingness of the I.B.E.W. to erect ma-

Floyd L. Carlisle—For Respondents—Redirect

3739

S. M. 1494

chinery to prevent interruption of your service by labor disputes, one of the inducing factors in recognition of the I.B.E.W.? A. It was.

Q. Mr. Moscovitz asked you whether at the time your recognition of the I.B.E.W. was evidenced by letter, these various local unions of the I.B.E.W. has been chartered, and you said that you understood that that took place. At the time you recognized the I.B.E.W., were there one or more local unions of the I.B.E.W. already in this New York City territory? A. In our companies?

3740

Q. No, in the territory. A. Oh, yes.

Q. I mean, there was a local No. 3, but the charters had not at that time been granted for one local to each group of company employees? A. That's right.

Q. The agreement under which certain types and classes of work were placed in the hands of the members of the I.B.E.W. was made by the New York Edison Company in 1924; was it not? A. That's right.

Q. And I ask you whether you recognize that as a copy of the letters which were exchanged between the company, the I.B.E.W., and the Building Trade Council? A. I do.

3741

S. M. 1495

Q. In April of 1937, and at all time since 1924, has that agreement been in effect? A. It had.

Q. And it is still in effect? A. It is.

Q. And would you say that it has been lived up to during that period by both sides? I mean, has the contract been complied with? A. It has worked in practice to the benefit, I believe, of the company and of the No. 3 local.

3742

Floyd L. Carlisle—For Respondents—Redirect

Q. Questions have arisen under it, but have been settled under it? A. That is correct.

Judge Ransom: I offer in evidence a copy of memorandum agreement between the Inside Electrical Workers Union, Local No. 3 and the New York Edison Company, endorsed by the Building Trades Council.

Mr. Moscovitz: May I see it?

No objection.

3743

Trial Examiner Gates: Admitted.

(Document referred to received in evidence and marked Respondent's Exhibit 23, Witness Carlisle.)

Q. (By Judge Ransom) Were all of these contracts of collective bargaining agreements, executed in behalf of the employees by Mr. Tracy and also by a com-

S. M. 1498

mittee authorized by the local union, as you understand it? A. They were.

3744

Q. Are there any exceptions possibly to the status of the committee being that in Westchester County where temporary officers had been empowered instead of a specific committee? A. That is correct.

Q. Did you know or were you told as to whether the agreements themselves were in any or all instances placed before the members of the local union and acted upon by them? A. Well, I don't know, but that was my understanding.

Q. That was reported to you? A. Yes..

Judge Ransom: That is all.

RECROSS EXAMINATION:

Q. (By Mr. Moscovitz) There is a question I would like to ask you, Mr. Carlisle, regarding this pamphlet, Respondent's Exhibit No. 23. Of course, it is one that I have seen before. If I can just have a moment to get the paragraph on it.

Q. This agreement that you have with the I.B.E.W. is an agreement that the I.B.E.W. will not organize your employees; isn't it, Mr. Carlisle? A. Why, the effect of that agreement was that No. 3 local would not organize any of our employees and we would not do any work on the premises of others than ourselves.

3746

Q. So far as this memorandum agreement of 1924

S. M. 1497

it was agreed that the International Brotherhood of Electrical Workers with whom you now have an agreement—

Judge Ransom: Local No. 3?

Mr. Moscovitz: Would not organize the employees?

The Witness: Local No. 3 is entirely different, an entirely different status, that is primarily a construction proposition, and when the decision of the Wagner Labor Act and the imminence of the State Act was seen, it was evident that that contract would not fit the situation.

3747

Q. (By Moscovitz) This contract was executed in 1924? A. That is true.

Q. And lasted how long? A. It is 13 years, isn't it?

Q. 13 years. A. Yes.

Q. When did this agreement which was—under this agreement which was with Local No. 3, it was provided that the local would not take steps to organize your employees? A. That's right.

3748

Floyd L. Carlisle—For Respondents—Recross

Mr. Moscovitz: That's all.

Q. (By Mr. Ransom) And the division of the work between your employees and outside employees as to work on consumer premises running into many millions of dollars is still governed by this agreement? A. That's right.

S. M. 1498

3749

Q. Under that agreement, that work is done by the American Federation of Labor through the I.B.E.W. and the Building Trades Council? A. That's correct.

Examination by Trial Examiner Gates:

Q. (By the Trial Examiner) There were some wage increases granted or other presumed benefits to the employees under the new contracts of the I.B.E.W. Is that correct? A. Oh, yes.

Q. And those applied to all employees whether members of the I.B.E.W. or not? A. It did.

3750

Q. Earlier in your testimony you stated that you had a letter from Mr. Tracy, and I understood you to say it was from Mr. John Tracy. A. That is wrong, it is Daniel W. Tracy, I misspoke myself.

Q. In two or three places you referred to "the company." I think from the context it was fairly clear that you were referring to the whole system and the group of companies? A. Yes, that's correct.

Trial Examiner's Gates: That's all.

Q. (By Mr. Ransom) There is one matter that may not be completely clear on the record, with respect to the contract of the Con. Edison Company with Local Union B-830, which appears to have been executed on or about

S. M. 1499

June 15th and effective as of that date, did the committee of employees, did the committee of electric employees local union and those other committee members who participated in those negotiations secure a different and more favorable wage provision than had been negotiated up to that time as to the contracts already signed? A. They did.

Q. And did you then agree with Mr. Tracy and with the committees of the local unions which had already executed contracts prior to June 15th that the same riders with these wage terms should be incorporated into and made a part of the contracts which had already been executed in the case of the two or three companies? A. That's correct.

3752

Q. So that the collective bargaining which took place between the Consolidated Edison Company and the committee of the local union of electrical employees of that company, produced this rider which is shown in all the copies of these contracts as having in some instances been put in after the date of execution of the original contract? A. That's right.

3753

Judge Ransom: That is all.

Trial Examiner Gates: I think that is all.

(Witness excused.)

Trial Examiner Gates: We will recess until 1:45 p. m.

S. M. 1500

(Whereupon, a recess was taken at 12:45 p. m. until 1:45 o'clock p. m. of the same day, July 6, 1937.)

*Proceedings***AFTERNOON SESSION**

3754 Trial Examiner Gates: Proceed.

Judge Ransom: I am not sure whether Board Exhibit #8 has been received in evidence or not, but to be sure of it I will offer Exhibit 8 in evidence. That is the articles of the constitution and by-laws of the I.B.E.W.

✓ Trial Examiner Gates: It will be admitted.

3755 (Document referred to received in evidence and marked Board's Exhibit No. 8.)

Judge Ransom: On examining the originals of Board's Exhibits 12 and 13, I find that they have only been marked for identification, they being the letters exchanged through Mr. Carlisle and Mr. D. W. Tracy, or between them. I offer them in evidence.

Trial Examiner Gates: They are admitted.

(Documents previously marked Board's Exhibits 12 and 13 for identification received in evidence.)

3756 Judge Ransom: I offer in evidence Respondent's Exhibit 11 for identification.

Trial Examiner Gates: It will be received in evidence.

(Document referred to received in evidence and marked Respondent's Exhibit No. 11.)

S. M. 1501

Judge Ransom: I take it that it is not necessary to offer the answers formally in evidence, is it, Mr. Moscovitz?

Mr. Moscovitz: It is in evidence, as I recall.

Judge Ransom: It is only marked for identification.

Mr. Moscovitz: Well, then, we had better make sure.

Judge Ransom: I offer in evidence Respondent's Exhibit 7 for identification, being the answer of the respondent.

Trial Examiner Gates: Is that a signed copy?

Judge Ransom: That is not. Have you ever produced one, the verified copy?

Mr. Moscovitz: No.

3758

Judge Ransom: All right, I will offer Respondent's 7 in evidence, and I think we can agree that one of the executed copies should be substituted for this copy here.

Mr. Moscovitz: It has been checked in our offices and they are correct copies, but you would still like to have the original?

Trial Examiner Gates: It think it would be preferable.

Judge Ransom: All right, I will offer it on that basis, that one of the originals will be substituted.

Trial Examiner Gates: Very well, it is admitted.

3759

(Document referred to received in evidence and marked Respondent's Exhibit 7.)

Judge Ransom: I offer in evidence a pamphlet, entitled, "A Call for Special Vote by all Employ-

S. M. 1502

ees of the New York Edison Company and United Electric Light & Power Company, to be held on November 22, 1933, etc."

3760

Harold C. Dean—For Respondents—Direct

Trial Examiner Gates: It will be admitted if there is no objection.

(Document referred to received in evidence and marked Respondent's Exhibit 24.)

Judge Ransom: I will call Mr. Dean.

3761

HAROLD C. DEAN, called as a witness for the respondents, being first duly sworn, testified as follows:

Direct Examination:

Q. (By Mr. Ransom) Where do you live, Mr. Dean?
A. Douglaston, Long Island.

Q. Are you now an officer of the Consolidated Edison Company of New York? A. I am an officer of the New York & Queens Electric Light & Power Company.

Q. What is your position with that company? A. Vice-president.

Q. How long have you been Vice-president? A. Since July, 1934.

3762

Q. Now, what was your position with that company before July, 1934? A. General superintendent.

Q. How long have you been employed by the company? A. Since 1916.

S. M. 1503

Q. In what field is your duties, I mean, are you an engineer or what? A. I am an engineer.

Q. And in 1934, '35 and '36 did your duties include supervision of the engineering work of that company?
A. It did.

Q. As Vice-president, did you deal with employment problems, particularly with reference to engineering em-

ployees? A. Yes, in fact in general employment problems.

Q. Are you generally familiar with the testimony that has been given in this case relative to the terminations of the employment of Messrs. Wersing, Grulich, Wagner, Kennedy and Emler? A. I am.

Q. Are you familiar with the circumstances which prompted the termination of the employment of these men by the New York & Queens Electric Light & Power Company? A. I am.

Q. Where were Messrs. Wersing, Grulich and Wagner employed? A. They were employed in the work order bureau of the auditor's department. 3764

Q. And where were Messrs. Kennedy and Emler employed? A. They were employed in the overhead bureau of the distribution department.

Q. Will you state for the record the general nature

S. M. 1504

and character of the work order bureau? A. The work order bureau had to deal with the allocation of charges to work orders, the keeping of the stores inventory, pricing and posting of material costs, distribution costs and so on. 3765

Q. And this was one of the bureaus in the auditor's department? A. It was.

Q. Now, what were the assigned duties of Messrs. Wersing, Grulich and Wagner, if you know, taking Mr. Wersing first. A. Mr. Wersing was rated as clerk, second grade, in the pricing and posting section for the work order bureau, and he was one of 12 clerks, as I recollect, reporting to the clerk in charge in that bureau, or in that division.

Q. Was that the division of stores accounts? A. Yes, it was in the division of stores accounts: pricing and posting section.

3766

Harold C. Dean—For Respondents—Direct

Q. Now, what about Mr. Grulich, what were his assigned duties? A. Mr. Grulich was clerk, second grade, in the same section of the same division, same bureau, the same department.

Q. And what was Mr. Wagner? A. Mr. Wagner was accounting assistant, first grade, in the analysis and report section of what is called the other order division of the work order bureau.

Q. Now, what does that consist of? A. Well, there

3767 S. M. 1505

were three accounting assistants first grade and three clerks there under a clerk in charge.

Q. And you said that the twelve clerks in the pricing and posting section reported to a clerk in charge; to whom did the clerk in charge report? A. He reported to a Mr. Locke, who was chief of the stores account division.

Q. To whom did the clerk in charge of the analysis report section of the other order division report? A. He reported to Mr. Eller, who was chief of the other order division.

3768 Q. To whom did Mr. Locke and Mr. Eller report? A. They reported to Mr. Mehrtens, who is the supervisor of the bureau.

Q. That is Mehrtens? A. That's right.

Q. And to whom did Mr. Mehrtens report? A. He reported to Mr. Housenbower, who was auditor, in charge of the auditor's department.

Q. What is the general character of the work of the overhead bureau? A. The overhead bureau has to do with the installation and the removal of poles, wires, services, installations of meters and so on.

Q. Does it have anything to do with the installation

Harold C. Dean—For Respondents—Direct.

3769

S. M. 1506

of conduits and cables? A. In recent years it has, due to lack of station overhead work, the men have been trained to install conduits and do underground splicing, secondary cable.

Q. What are the two main divisions of the overhead bureau? A. There is the Elmhurst section and the Jamaica section.

Q. What were the assigned duties of Mr. Kennedy and Mr. Emler in the overhead bureau? A. They are both rated as linemen, first grade, in the Elmhurst section of the overhead bureau? .

3770

Q. Do you know, and did you know at the time, what was the reason for the laying off of those two employees? A. Yes, it was lack of—they were surplus employees, and there was plenty of employees for the work in hand.

Q. Were the positions that had been held by Mr. Kennedy and Emler left unfilled after their lay-off? A. They were.

Q. In the case of Wersing, Grulich and Wagner, were their positions left unfilled? A. No, not directly. Other employees were transferred to their positions, with the result that there were six positions left unfilled in the inventory department at that particular time.

3771

Q. Will you explain for the record what were the circumstances of that? Under what circumstances, and

S. M. 1507

for what reasons were men laid off in the work bureau and the men transferred from the inventory department to those places? A. Well, the inventory department was established September, 1934 as a result of the Public Service Commission's order requiring the permanent and continuing detailed inventory of property and as-

3772

Harold C. Dean—For Respondents—Direct

sociated costs. We had built that up from nothing to a maximum of about 222 employees.

Q. Well, let me ask you about that order. Did that order require both an inventory of the factory, and by inventory we mean listing by particular classifications,—did it require an inventory or listing of the property and also certain costs and accounting data related to original costs as defined by the Public Service Commission and the like to be applied to the inventory of the physical property? A. It did, and the order with respect to certain accounting divisions was protected by the company and certain other companies in the state and was finally annulled, but the order with respect to the maintenance of the inventory itself was upheld.

3773

Q. Do you recall whether the questions of the validity of that order which required this inventory and this assembly of accounting data in relation to the inventory, was finally passed on by the Court of Appeals of the State of New York? A. I believe it was.

Q. And without expecting you, as an engineer, to go

S. M. 1508

3774

into the details of the decision, is it your understanding that the requirement in respect of the accounting data was annulled by the Court of Appeals, but the requirement for inventory merely was left in force? A. That is my understanding.

Q. Now, you said that the authorization that the New York & Queens Electric Light & Power Company had with this inventory and accounting work in relation to the inventory, was built up until by June of 1935 your company had how many employees? A. 222.

Q. Was that your all-time high on that work? A. Yes, that is my recollection. That is the all-time high.

Q. In connection with the work of the inventory

Harold C. Dean—For Respondents—Direct

3775

department on this physical listing of the property and the accumulation of costs data and associated data in relation to the inventory, did there come a time when it seemed clear that you should not proceed with the completion, or the correction, of the cost data as you had been going ahead with it? A. Yes, by July, 1934, it became clear that there was a question as to the basis of making up of this cost, what elements should be included in them, and also there was a question as to the units of inventory themselves, as to their possible increase in size, which made it appear that it was unwise for us to go ahead at the rate at which we had been going in carrying out this order.

3776


S. M. 1509

Q. And in any event, by the summer of 1936, the matter reached such a stage that it was undesirable to continue with your full force that you had built up in the inventory department? A. That is so. That is the summer of 1935.

Q. Yes. And had the employees who were in this inventory department which had been built up for this particular work, had they been hired directly and from the outside for this work? A. No. In practically all cases advantage had been taken of the fact that there was a surplus of employees in other departments of the company and employees had been transferred from other departments through the inventory to do this work.

3777

Q. So that the force which reached a maximum of 222 employees had almost entirely been built up by transfers from departments in which there was a surplus of employees and the possibility of transferring men to the inventory department? A. That is true. I have a record here of the sources from which we got those employees.



3778

Harold C. Dean—For Respondents—Direct

Q. Well, can you state from your record where the 222 came from? If you can, you may do so. A. From the distribution department, 82 were transferred.

Q. Yes. A. From the personnel, one.

S. M. 1510

Q. Yes. A. From the general service department, three.

Q. Yes. A. From the engineering department, 57.

3779

Q. Yes. A. From the executive departments, 4.

Q. Yes. A. From purchasing and stores, two.

Q. Yes. A. From the auditor's department, 32.

Q. Yes. A. From the treasurer's department, 16.

Q. Yes. A. From Consumer's Investments, 2.

Q. Yes. A. From meter and test, 3.

Q. Yes. A. Transportation, one.

Q. Yes. A. From sales, 4.

Q. Yes. A. From accounting, 12.

Q. Yes. A. There were three new employees. Those employees were principally office boys and people that

S. M. 1511

3780

were not available in other departments.

Q. And you have accounted for how many in total? A. 222.

Q. And of the 222, 219 were brought in to create the inventory department by transfer from other departments? A. That's true.

Q. What number of employees did you finally reduce the inventory department to which had a maximum of 222? A. We reduced it to 45.

Q. How many employees were laid off in order to effect this reduction? A. 42 were laid off directly from the inventory department. 135 were transferred back to other departments, and in those cases the other de-

Harold C. Dean—For Respondents—Direct

3781

partments had the responsibility to provide the vacancy in order to take these men back.

Q. How did you determine whether employees were to be laid off directly from the inventory department or transferred to other departments from which, as you say, employees would be released in order to enable these men to go back into those other departments? A. The record of employees in the inventory department who would have to be laid off otherwise were reviewed by the personnel department in conjunction with the other departments and if it appeared that there were other employees in other departments more desirable

3782

S. M. 1512

from the point of view of efficiency and family responsibility than those in the inventory department, arrangement was made to transfer inventory department people back to the other departments and the other departments made the lay-offs.

Q. You spoke about the employees' records being reviewed by the personnel department in conjunction with other departments; do you mean the departments or the department heads of the department in which these men had previously worked before they came into their other capacity there? A. Usually so, yes.

3783

Q. Usually with the departments where the men had worked before they were brought into this inventory department? A. That's right.

Q. You spoke of family responsibility; family responsibilities as shown by what? A. Oh, by the number of dependents they had, whether or not they were married.

Q. Was seniority considered at all in determining which employees were to be let out? A. Yes, other things being equal. ♡

3784

Harold C. Dean—For Respondents—Direct

Q. But only if other things were equal? A. That is all, not the primary determination.

Q. So far as you have been stating about the situation that affected employees in the inventory department or in departments to which men were transferred

S. M. 1513

on the inventory department, what was the situation with respect to the overhead line bureau, or the overhead bureau, at the time Mr. Kennedy and Mr. Emler were let out and previous to that? A. The overhead line bureau had for several years had a surplus of employees, we had been gradually attempting to reduce that number. This surplus was brought about by the fact that in the first place there was less building construction going on, the number of real estate developments had dwindled to a very low number and we had been converting overhead lines to underground, curtailing the overhead and expanding the underground so there was less work for the overhead men.

3785

Q. In the early history of the New York & Queens Electric Light & Power Company, before that bureau was built up as closely as it is now, had there been from time to time the development of large areas by real estate promoters or developers? A. Oh, yes.

3786

Q. And did that sort of thing, that process in the earlier days of your company, lead to a great deal of overhead work on distribution lines? A. Yes, it did.

Q. In the past few years, has the number and scope of those real estate developments been very much reduced? A. It has been and still is.

S. M. 1514

Q. Has that been both because of inactivity relatively in the real estate department and because of the

fact that the borough is becoming quite well built up anyway? A. Due to both.

Q. Now, likewise, in recent years in that borough with its large rise in population, have the borough authorities or the municipal authorities desired and required that substantial parts of your lines be put underground? A. They have asked that that be done and the company has done that.

Q. You have done that to a considerable extent? A. To a considerable extent during the depression we have done a large amount of conversion of overhead to underground wires.

3788

Q. That is a work that does not add to the volume of your business or the number of consumers? A. That is true.

Q. But it adds greatly to your capital cost? A. That is it.

Q. To what extent did you reduce the number of employees in the overhead, is it overhead line bureau? A. Overhead bureau of the distribution bureau, at least that is what its name was at that time.

Q. Well, can you give us any figures that indicate the extent of the reduction that you made in that bureau,

3789

S. M. 1515

say, beginning from '32 down, of 1932? A. Yes, on January 1, 1932, there was 402 employees in that bureau and on December 31st of 1936 there was 329, at the time Messrs. Kennedy and Emler were laid off, there were 336.

Mr. Moscovitz: What was the second figure, 399?

The Witness: 329.

Mr. Moscovitz: The other was 336?

3790

Harold C. Dean—For Respondents—Direct

Q. (By Mr. Ransom) 422 down to 329, isn't it? A. That is right.

Q. Well, had there at the same time been changes in the kind of work performed by the employees, linemen in the overhead bureau? A. Yes, we have broken the linemen in to doing underground work, we got men to install conduits and make splices in underground cable and run in underground services where services were changed over from overhead to underground, doing the wiring connections inside, between the service entrance and the meter.

3791

Q. Well, was that shift in the kind of work done by the linemen in the overhead bureau to prevent the necessity of still further lay-offs? A. That was the object of it entirely.

Q. Did your company do anything about getting other work for Messrs. Kennedy and Emler when you

S. M. 1516

found that they would be laid off so far as your overhead bureau was concerned? A. Yes, our personnel director was in contact with the personnel director of the New York Edison Company, and on a number of occasions, when they had occasion to increase their force for any reason he was advised, and in a number of cases we had transferred employees from Queens to New York to fill vacancies there.

3792

Q. On the construction forces? A. On the construction forces, it was not always the same kind of work that they were doing, but it was construction work.

Q. Well, did you get any word from the New York Edison people about their having jobs on which they would use wire men? A. Yes, at this time the personnel department of the New York Edison advised the Queens personnel department that they had a vacancy

for a few wire men, they asked if we had somebody that could be sent over to apply for the job. So our personnel director, our personnel department took the matter up with the distribution department and three men were selected to go over and interview the New York Edison Company.

The assistant supervisor of the New York Bureau of Queens Company told the men that they had this op-

S. M. 1517

portunity of getting good jobs in the New York Edison as wire men and sent them into the personnel department of the Queens Company.

3794

Q. Of course, these men weren't wire men by listing or occupation? A. No, they weren't cable splicers either, but we thought that they knew enough to perform the duties of wire men in the construction bureau of the New York Edison Company.

Q. Well, is a wire man a higher or lower rating of employment? A. Well, it is comparable to—

Q. Or merely different? A. It is comparable in pay to the wire men, the wire men's work usually is inside and from some respects it is more desirable from that point of view, even the linemen do certain wiring, they hook up the meter from the service entrance to the meter cutout and do certain wiring work in transformer vaults. it is then common to transfer men back and forth, of course in both cases they must know the system, the danger of contacting the high voltage.

3795

Q. Well, were Messrs. Kennedy and Emler among the men who had been referred to the New York Edison personnel director? A. Yes, they were sent over to the personnel department in New York, who referred them to the supervisor of the construction bureau of the New York Edison Company, and he asked them what

3796

Harold C. Dean—For Respondents—Direct

S. M. 1518

their experience had been. They said, "Well, we are just wire men, and we don't know anything about this work."

Q. Did they say they were wire men, or did they say— A. No, they said, "We are not wire men. We are line men," so that he interviewed them no more and sent them back to the personnel department of the Queens Company and the Queens Company had no further work for them, so they were laid off.

3797

Q. And what was done as to payment of a separate allowance? A. They were given two weeks' pay for each year of continuous employment with the company.

Q. Were you personally aware of the lay-offs or transfers that were made in this case, both as to Kennedy and as to Emler, and as to Grulich, Wagner and Wersing? A. Yes, I was familiar with the record. I reviewed the records in all cases.

Q. At that time? A. Yes.

3798

Q. Were you aware of the union activities, of the activities in labor organizations, of these men? A. Well, in a general way I was. In the case of Wersing and Grulich, and of Kennedy and Emler, I was.

Q. Were you aware of the union membership and activities of other employees who are still with the company? A. Yes, in a general way, I recognized several men who have testified in this hearing, who are still em-

S. M. 1519

ployed by the company.

Q. Did you directly or indirectly cause any of these five men to be laid off because of any activities in labor unions or in respect of their membership or work for any organizations to which they belonged? A. No. In all cases they were laid off solely for the reason that

Harold C. Dean—For Respondents—Direct

3799

there was too many employees for the work to be done.

Q. If these particular five had not been laid off, would others have been laid off instead? A. Others would have had to be laid off. As you will see from the record, many were laid off besides these men.

Q. And were other employees laid off in addition to these? A. Yes, both before and after.

Q. In what year were Messrs. Wersing, Grulich and Wagner first employed by your company? A. In 1929.

Q. Was that a year in which a large number of employees were hired? A. Yes, the records show that we have more employees in the company whose term of employment commenced in that year than in any other year.

3800

Q. Have you any information as to the length of service the employees in the inventory department in which it was necessary to make this large reduction in

S. M. 1520

force,—you spoke of 222 men being reduced down to 45— A. Yes, in the case of all the 42 men who were laid off directly from the inventory department, 13 of them had been employed in 1929, and 11 subsequent to 1929; 18 prior to 1929. And of those who were transferred back to other departments, 31 had been employed in 1929; 45 subsequently thereto; and 59 prior thereto.

3801

Q. That is, 59 of the men who were transferred back to other departments from the inventory department, when you cut down the size of the inventory department, 59 of them had been employed by the company prior to 1929 and continuously since? A. That's right.

Q. I believe that Mr. Wagner testified here that there were three employees in his bureau who were junior to him in length of service. He mentioned John Gloss, Vincent MacSavany, and Strauss. Have you checked

3802

Harold C. Dean—For Respondents—Direct

that? A. In the case of Vincent MacSavanny and Strauss, they were employed in the same year as Mr. Wagner, but later. John Gloss was employed in January, 1930.

Q. In reviewing the record of Wersing, Grulich and Wagner, did you regard their work as outstanding, or as about average? A. Oh, just average in the case of Wersing and Grulich. Wagner was above average.

S. M. 1521

3803

Q. Did you consider the quality of their work in comparison with the six married men in the inventory department who have been laid off, who would have been laid off, rather, if you had not arranged to transfer them to the accounting department? A. Yes, I did, and in all cases the men who were transferred from the inventory department were better as employees, or at least as good, and in addition they were all married men.

Q. Was there seniority at least as long as that of Messrs. Wersing, Grulich and Wagner? A. In every case, all six of them.

3804

Q. And they were married men? A. Messrs. Wersing, Grulich and Wagner were not married.

Q. These other men were married? A. That's true.

Q. Now, as to Kennedy and Emler. When were they employed? A. Kennedy's last date of employment was January 18, 1928.

Q. You mean his date of last employment? A. Date of last employment, yes.

Q. Emler? A. Emler was employed July 18, 1927.

Q. Now, you said that these men were first grade linemen at the time they were laid off. A. Yes.

Q. How many first grade linemen did the company have with longer or shorter terms of service? A. There

S. M. 1522

were 54 first grade linemen with longer terms of service. 12 were shorter. And 6 were in between Kennedy and Emler.

Q. Was there anything outstanding in the work of Kennedy and Emler? A. No, there was not. Their records, which have already been introduced here, will indicate that. In addition, Mr. Kennedy had a remarkably bad record for absences. He was, I recollect, away 22 per cent of the time the last year he was employed with us, 16 per cent of the time the year prior to that.

3806

Q. I show you Respondent's Exhibit No. 4 and 6 for identification, and ask you if those are the employees' rating cards, or copies of them, that were kept in the regular course of business with respect to those employees? A. Yes, those are their rating cards.

Q. And they were in departments which at that time, in your company, has had a system of employee rating such as these cards represent? A. That is true.

Judge Ransom: I offer in evidence Respondent's Exhibits 4 and 6 for identification.

Trial Examiner Gates: If there is no objection, they are admitted.

3807

S. M. 1523

(Documents previously marked Respondent's Exhibits 4 and 6 for identification now received in evidence, Witness Dean.)

CROSS EXAMINATION:

Q. (By Mr. Moscovitz) Mr. Dean, have you been in charge of the labor policies of the New York & Queens since July, 1934? A. Well, I wouldn't say I have been in charge of it. I have been vice-president and labor matters have been one of my particular considerations.

3808

Harold C. Dean—For Respondents—Cross

Judge Ransom: You said "employment matters."

Q. (By Mr. Moscovitz) Well, are you the person in office who handles such labor questions as arise? A. Not exclusively. I have been chairman of the management committee who has dealt with the employee representation plan in those days.

Q. Yes. And how long had you been in that position? A. Since about the middle of 1935, I would say.

3809

Q. And before that, were you a member of that committee in any way? A. No, I was not.

Q. Did you advise with the committee before that? A. Oh, yes, I was an officer of the company and most of these departments reported to me.

S. M. 1524

Q. And was it your job to be advised of important labor questions within your company? A. Oh, I would say so.

Q. Yes. And was it also your job to be advised of the operation of the Employee Representation Plan? A. Yes, at the time I was chairman of the management committee that was so.

3810

Q. And as chairman of the management committee, did you meet with the employees from time to time to take questions up which were submitted under the plan?

A. With representatives of the employees, yes.

Q. And for how long a period of time did you hold that particular job? A. From about the middle of 1935, to the present.

Q. When you say to the present, what do you mean? A. Well, up to the termination of the employee representation plan certainly.

Q. You mean through April, 1937 at least? A. That's right.

Q. What were your duties as the management representative in these labor questions? A. To hear their problems, discuss them with them and go into matters with the rest of the management committee.

Q. And was your committee the final management

S. M. 1525

committee or was there one above yours? A. No, we were the final management committee.

Q. And you continued in that work under the new contracts which have been executed throughout the system with the I.B.E.W.? A. Well, there has been very little time since then, I have been on vacation, I can't say that I have been at all active.

3812

Q. But are you the person who is in charge of such questions as may arise under the newly executed contracts? A. Well, I don't know that I would say that, the executive vice president in Queens is probably the man to decide that. We have had no matters come up so far. I certainly would be in on a discussion of it.

Q. And who is the vice president, the executive vice president? A. Mr. Coleman.

Mr. Ransom: Lawrence A. Coleman.

3813

Q. (By Mr. Moscovitz) And your position, however, is the same, isn't it, as it was before the contracts were executed in that you would handle important labor questions as they arise? A. Probably.

Q. During the period of time that you were on the management committee, did you know of the existence of the Independent Brotherhood of Utility Employees? A. I knew of them in a general way, yes.

Q. Did you know too when the Brotherhood became members of the International Brotherhood of Electrical

3814

Harold C. Dean—For Respondents—Cross

S. M. 1526

Workers? A. Well, not exactly. I know there were changes in the status of their organization from time to time, I heard that, I can't tell you anything more.

Q. Do you know that Mr. Wersing was an active member of the Brotherhood of Utility Employees? A. I did later on, I certainly did.

Q. And when you say "later on", you mean when? A. Well, from December, 1935, we will say.

3815

Q. Before or after his discharge? A. After his discharge.

Q. You certainly knew it then? A. Yes, I did.

Q. Were you advised of it also before his discharge?

A. I knew in a general way that he was active in it, some organization.

Q. Sir? A. Some organization.

Q. Yes, and you knew the same about Mr. Grulich?

A. That's true.

Q. Mr. Emler? A. Well, I am a little doubtful about Emler, I probably did.

Q. Mr. Kennedy? A. Yes, I knew about Mr. Kennedy.

3816

Q. And is there a question in your mind about Mr. Wagner? A. Yes, I don't know about Mr. Wagner, I

S. M. 1527

did not know about him until after he had been laid off.

Q. Did Mr. Solosy come within your jurisdiction? A. No.

Q. Was the R. A. and I. Detective Agency one which was employed in your organization? A. They did some work for us.

Q. And was that at the time the organization of the Brotherhood of Utility Employees? A. No, not specifically, I don't think that is the question to put to me for

Harold C. Dean—For Respondents—Cross

3817

that purpose, they were employed of general purposes, for checking up on theft or loss of material in the yards, and other reasons.

Q. How long a period have the R. A. and I. been employed by your company? A. I don't remember.

Q. Were they employed for any period outside of 1935 and 1936? A. Well, I don't remember with certainty.

Q. Do you have any recollection at all of their having been employed before 1935? A. Well, it would be only a hazy recollection.

3818

Q. Well, do you have any? A. Yes, I think I do recollect that they worked for us on occasion before 1935.

Q. But you do have recollection of their being em-

S. M. 1528

ployed in 1935, is that right? A. Well, I am hazy as to the date, yes I think in 1935.

Q. 1936? A. No, I am not sure about 1936.

Q. All right, and outside of the reasons for employment that you have already given, were there others? A. No.

3819

Q. Do you recall whether or not the agents of the R. A. and I. during 1935 made reports to management on the activity of any of the employees? A. Only in cases where we suspected them of either stealing material or attempting sabotage or something in some case like that.

Q. Were the reports rendered on their organizational activities in addition? A. I don't recollect that they were.

Q. Would you say that they weren't? A. Yes; I would say that. Their whole report was to indicate where the company was in dangering of losing its property or having its service interrupted.

3820

Harold C. Dean—For Respondents—Cross

Q. In that regard they would then investigate the organizational activities of certain employees. Is that right? A. I don't know. No, I would not say that, not their organizational activity.

Q. Well, activities which might result in the interruption of service personally, is that right? A. Yes.

S. M. 1529

Q. Sir? A. That is true, yes.

3821

Q. And would they not also investigate such circulars as may have been distributed during that period of time to determine the source? A. Not that I know of.

Q. All right. A. I don't see why they would.

Q. Now, Mr. Dean, has Mr. Wersing, during that period of time and before his discharge or lay-off brought your attention to the fact that he was an officer of the Independent Brotherhood of Utility Employees? A. He represented them. I don't know whether you would call him an officer or not, I recollect that Mr. Wersing and Mr. Grulich came up to see me once regarding an employee whom he had laid off.

3822

Q. Then, do you recall when it was in relation to the time of their layoff or discharge? A. I think it was prior to that.

Q. Shortly prior? A. I don't recollect that.

Q. All right, and was that the first time that you knew this organization was in your company? A. Oh, no. I had a general knowledge that there was activity

S. M. 1530

there handing out handbills at the door.

Q. And was it called to your attention that Mr. Emler was active too, as a representative? A. Well, I don't recollect.

Q. Were there any other labor organizations organizing in your company at that time? A. Organizing?

Q. To your knowledge? A. Organizing or attempting to organize?

Q. Attempting to organize? A. Well, I don't know whether they were or not, of course, we had our employee representation plan working so that practically everybody was in that and there was very little interest in any other organization.

Q. Now, in 1935, before the discharge of Mr. Wersing and Mr. Emler or rather Mr. Grulich, you were at what peak in employment? A. Well, are you talking about some particular department? 3824

Q. No, in your entire system, or rather in your entire company? A. I don't know, I haven't got the records in that case, I just have got the records in the case of the inventory department which was one of my departments I was especially interested in.

Q. I see. And could you give us an approximate figure on the number of employees working for the

S. M. 1531

company at the time these gentlemen were discharged or laid off? A. Yes, there were over 4,000, say 4,300.

Q. And of that number how many did you say were employed in this department where Mr. Grulich and Mr. Wersing were? A. Well, I could not give you any figures as to those in the total department, I had them in several sections of some of the divisions of the bureaus that they were working in, I don't know about departments. 3825

Q. Well, I mean in a department where these two gentlemen were working? A. I don't know.

Q. Can you give me an approximation?

Judge Ransom: You mean the whole department?

3826

Harold C. Dean—For Respondents—Cross

Mr. Moscovitz: Yes.

The Witness: Possibly three hundred or four hundred.

Q. (By Mr. Moscovitz) 300? A. Yes, that is general.

Q. And does that department then break down into divisions? A. Into bureaus.

Q. Into bureaus? A. Yes.

Q. And these two men find themselves in one of the bureaus? A. The three men were in one of the bureaus.

3827

S. M. 1532

Q. Who was the third? A. Wagner, Wersing and Grulich.

Q. How many did you say were employed in that bureau? A. I can't say, I don't have that figure either.

Q. Well, what figure can you give me in approximation? A. Well, in the pricing and posting section including the clerks in charge, there were 13.

Judge Ransom: A section is a sub-division of a bureau.

3828

The Witness: A section is a sub-division of a division which is a sub-division of a bureau.

Q. (By Mr. Moscovitz) Yes. A. And in the analysis and report section of a different division again there were seven including the clerk in charge. Now, these were sections, different sections and different divisions of the one bureau.

Q. What bureau? A. It was the work order bureau.

Q. Work order bureau? A. Yes.

Q. And these three men were employed in the work order bureau? A. Yes.

Q. And how many men in the bureau? A. I don't know.

Harold C. Dean—For Respondents—Cross

3829

Q. Can you give me an approximation? A. Probably a hundred.

S. M. 1533

Q. Sir? A. A hundred, we will say.

Q. 100? A. Yes.

Q. And it was out of that figure of 100 that these three men came when they were either laid off or discharged? A. That is true.

Q. Now, you refer to Mr. Grulich before as a second rate clerk, he was a first grade clerk. A. Wersing was a second grade, Mr. Grulich was a first grade.

3830

Q. First grade? A. That's right.

Q. Now, none of these three men had been laid off or discharged before, had they? A. Not that I know of.

Q. And the record of their employment is one which is already in evidence, is that right? A. That record shows the time they were employed and what they were rated at, their increase in pay and all that.

Q. Yes. A. Yes.

Q. And it gives the rating as to whether they were good, fair or average employees, or poor employees?

A. I don't know, we did not have a rating working at that time, later on we did when the other two men were laid off.

3831

Q. So that you had no rating system in existence at the time these three men were laid off? A. Not a cur-

S. M. 1534

rent rating by the bureau. When they left, they were, their bureau head gave his opinion of them. Of course, it was purely his opinion.

Q. Purely his opinion? A. Yes.

Q. Based on his observation of their work, is that right? A. Yes.

3832

Harold C. Dean—For Respondents—Cross

Q. But there was no record of employment and rating outside of hours and income? A. That is all.

Judge Ransom: There were no such rating cards as there was in the overhead bureau later?

The Witness: No, there are now, but there were not at that time.

Q. (By Mr. Moscovitz) Now, how many men out of a hundred had greater seniority than these three men? A. Well, I don't know.

3833

Q. Is the hundred figure—strike that out, please. How many had less seniority than the three men? A. Well, I don't know, I think the figures that I gave for the inventory department are very typical, those men were recruited from all departments of the company and you will note there that a large proportion came in the year 1929.

Q. These three men, these three men too, came in 1929, did you say? A. Three, I think Wersing, Grulich

S. M. 1535

and Wagner. I think all three came in '29.

3834

Q. All three came in '29? A. Yes, sir.

Q. And what was the figure in the department in 1929? A. Inventory department?

Q. Yes. A. Well, 42 men who were laid off directly and 135 who were transferred back, there were 13 out of 42 in the first case who were employed in 1929 and 31 out of 135 who were employed in that particular year.

Q. Now, in 1929 how many men did you have in the department itself, not the bureau? A. The inventory department?

Q. Yes. A. None.

Q. None? A. No.

Q. And when did it reach its peak figure? A. July of 1935.

Q. And that figure was what? A. 222.

Q. And what did you say the figure is today? A. Well, I did not say what it was today, we reduced it, and there has been a reorganization of the entire system, we reduced it to 45, after that.

S. M. 1536

Q. When did you reach the figure of 45? A. I don't know whether I have that or not. Sometime in 1936.

3836

Q. Do you recall what time in 1936? A. The middle of 1936.

Q. Do you recall who the first men were that were let go in that bureau? A. No, I don't.

Q. Were there men laid off or discharged before Mr. Wersing, Mr. Grulich and Mr. Emler in that bureau? A. Yes, in the inventory department you mean?

Q. I mean in the bureau. A. I don't know about the bureau. I suppose there were but I don't know.

Q. Well, do your records that you have been looking at from time to time disclose whether or not there have been others laid off or discharged before these three men? A. From that bureau?

3837

Q. Yes. A. No, my records of discharges are only for the inventory department.

Q. I see. A. And with 135 people, they were scattered throughout the company, besides the 42 who were laid off directly from that department.

S. M. 1537

Q. Now, can you tell us if this question refreshes your recollection; whether or not there were others laid off or discharged in this particular bureau before these three men about whom we have been talking? A. No, I don't know that.

3838

Harold C. Dean—For Respondents—Cross

Q. You don't know that? A. No, I don't keep any of those figures in my mind.

Q. Do you know what the figure was in the bureau at the time these three men were laid off? A. No, I don't.

Q. You don't? A. I would say about 100 but I don't know whether that is right or not.

Q. Yes, now, what is the figure today? It was 100 then, what is it today? A. I don't know what it is.

3839 Q. Now, you say these three men were laid off or discharged because you had to cut the force? A. Yes.

Q. You were going to make room for married men? A. There was a surplus of employees in the inventory department in the case of these three men, if you are talking about Messrs. Wersing, Grulich and Wagner.

Q. That is right. A. Yes.

S. M. 1538

Q. What did you say? A. A surplus of employees in the inventory department occasioned the layoff entirely of, well, the reduction of 222 down to 45.

3840 Q. So you were going to move the married surplus men into this bureau and move the single men in the bureau out? A. We did in this particular case. Now, marriage wasn't the sole consideration. Just because a man was married did not mean that he was kept, he had to be a good man in addition.

Q. I see, so if he was a married man and not such a good worker he might not stay? A. That's true.

Q. And if he was a single man and a better worker he would stay? A. That might be so, yes.

Q. And were there women in the bureau at that time? A. Well, I presume there were, I don't know.

Q. Composing, making up, this 100 figure? A. I don't know, I suppose so, but I don't know.

Q. Well, are you familiar with the operations of the bureau with the type of personnel? A. Well, there were clerks and certainly women clerks, I know there was at least one because I have her name here, Blanche Strauss.

S. M. 1539

Q. Were there others? A. Probably.

Q. And did they do the same work as the men did? A. Well, I suppose generally, a woman can do a first grade clerk's job.

Q. The same kind of work? A. Yes.

3842

Q. There is no distinction on the basis of sex? A. No, we tried not to make any distinction there.

Q. What standard did you develop for the continuation in employ of married women at the time you were letting single men go in that bureau? A. We did not discriminate against married women.

Q. Or single women? A. No.

Q. So that your plan was only for the removal of single men without consideration to the question of whether or not you had single or married women left in the bureau? A. No, not necessarily, there were single women laid off, I know that directly from the inventory. I happen to know that because a number of them came in to see me after they had been laid off.

3843

Q. Were they in the same bureau as Mr. Grulich? A. No, the inventory department had been laid off directly. I am not familiar with any women who had been laid off from stores bureau.

S. M. 1540

Q. So you are not familiar with the women laid off in the bureau? A. No.

Q. You don't know of any women in the bureau having been laid off? A. No, I have only the records in the

3844

Harold C. Dean—For Respondents—Cross

particular department. In this particular case. I am also familiar with the overhead situation.

Q. But despite the fact that you have records of the inventory department, the place where these three men were employed was in the overhead bureau? A. The work order bureau, you mean.

Q. The work order bureau? A. Yes.

Q. All right. Now, you can't give us any testimony on the seniority of these men in relation to that of other men in the bureau? A. Well, except that I know what Mr. Wagner said in his testimony.

3845

Q. Yes. A. That there were three other people who had less seniority than he.

Q. Yes. A. Well, it is true, very slightly less seniority, slightly different work, that is true. They came a

S. M. 1541

few months after he did.

Q. The other men you don't know? A. The other men?

Q. Yes. The other two men you have no basis of determination for? A. I know they came in 1929.

3846

Q. But you have no basis for determining seniority or length of service in its entirety? A. No.

Q. To other persons? A. But despite that, I said that seniority counts for something when other things are equal.

Q. Yes, what are these other things that you took into consideration in the layoff or discharge of these three men? A. Their efficiency and their family responsibilities.

Q. Yes. Now, you have already testified too that the family responsibility was not the only consideration? A. That's true.

Q. So, we really come down to the main one in so far

as I could make out of competency and efficiency in determining whether or not they should remain? A. That is not the only consideration, but that is certainly a prime consideration.

S. M. 1542

Q. A prime consideration? A. Yes.

Q. Then you have testified that you have no record or basis of determining their efficiency except as a report might have been given to you at the time of their consideration for layoff or discharge by their superiors?

3848

A. That's true. I talked to their superiors, their bureau heads, department heads.

Q. Yes. Did the superior with whom you talked point out to you that all of the men whom you were considering for layoff or discharge at that time were officers of the local of the Independent Brotherhood of Utility Employees? A. No.

Q. Well, you knew that Mr. Wersing was active, that Mr. Grulich was active and that Mr. Emler was active, rather we can leave Mr. Emler out— A. I knew Mr. Grulich and Mr. Wersing were active.

Q. You knew they were officers? A. I didn't know what their particular jobs were. I knew they were active. Mr. Wagner was laid off at the same time. I believe they testified he was treasurer.

3849

Q. Then had they been given notice before their date of discharge or layoff that they were going to be let go?

A. I think not.

Q. Did you consider them for employment elsewhere?

S. M. 1543

A. No, for the reason that I knew I had a couple of hundred other men to let go.

Q. Was this the first time you had ever had to let a number of men go? A. No.

3850

Harold C. Dean—For Respondents—Cross

Q. What had the policy of the company been in similar situations? A. A similar policy.

Q. A similar policy? A. Yes.

Q. You always considered efficiency? A. Yes.

Q. Marriage? A. Yes.

Q. Is that right? A. Yes.

Q. When, before this, had you laid off a number of men? A. Well, the record shows—take the case of the linemen—there has been a gradual reduction there from 1932. I have those figures, down to the present time.

3851

Q. When before had you ever laid off men in the work order bureau? A. I don't know about the work order bureau.

Q. Sir? A. I don't know about the work order bureau. I just know we took people from that bureau or

S. M. 1544

the department of which that bureau was one, to make up the inventory department. We had the problem of reducing the force of the inventory bureau, including—see, we had taken at the time thirty-two employees from the auditor's department to make up the work order bureau.

3852

Q. Did you go over the records with the personnel department on transfers from the— A. I did.

Q. Department? A. I did. I took it up with the department and the department heads.

Q. When did you start going over these records? A. Well, in July, 1935, in the case of the inventory department.

Q. Yes. A. A gradual reduction from then on.

Q. A gradual reduction from July? A. Yes.

Q. When you say inventory department, do you also include the work order men? A. No, the inventory department was separate and distinct. The work order bureau was not in the inventory department.

Harold C. Dean—For Respondents—Cross

3853

Q. I see. When did you start going over the question of what men were to be laid off in the work order bureau? A. Well, probably at the time they were laid

S. M. 1545

off, in that particular case.

Q. That was when? A. I believe it was in November, 1935, yes:

Q. And with whom did you go over their cases? A. With the personnel director.

Q. Who was the personnel director? A. Mr. Waterhouse.

3854

Q. Yes. A. And with the head of the inventory department.

Q. Who was that? A. Mr. Planteroff.

Q. Yes. A. The head of the auditor's department.

Q. Can you recall when it was? A. Well, within the preceding week or ten days, I suppose.

Q. Yes. Now, why did you take this question up with those men at that time? A. The men in the inventory department had come from the auditor's department. We had to cut off good men. In fact much better than average men.

3855

Q. Did you have to make room— A. We had to lay them off or find some other place to place them. They were part of that 135 men that I testified we transferred to other bureaus.

S. M. 1546

Q. Then you were compelled to find room for 135 men? A. Yes, and they happened to be six of that group.

Q. And you finally got to that point in this bureau in November of 1936? A. That's right.

Q. 1935, rather? A. That's true.

Q. How many men did you have to place at the time

3856

Harold C. Dean—For Respondents—Cross

you were faced with the question of removing these men from this bureau? A. Well, that particular day we will say six.

Q. Is that the figure at the time? A. Yes, there were six laid off that particular day that I know of.

Q. From the department? A. From the inventory department. I know that.

Q. And can you recall who they were? A. No, I cannot.

3857

Q. Do you recall whether or not they were all put in this bureau? A. They were.

Q. Yes. And were they then given the jobs of the six men who were removed from the bureau? A. That's right. Either directly or indirectly. There were transfers made around. When I say bureau, possibly one of

S. M. 1547

them were in some other bureau of the same department, but they were in the same department.

Q. Who were the six men who were removed from the Bureau? A. I don't recollect who they were, except these three who I happen to be booking up.

3858

Q. Do you know whether or not the other three who were removed from the bureau have since been reinstated in the bureau? A. No, I am sure they have not.

Q. Do you know whether or not they have found employment elsewhere in your company? A. In the company?

Q. Yes. A. No, I am sure they have not.

Q. No? A. It was a problem to take care of the other 135 men I had coming.

Q. Mr. Waterhouse, when he was discussing with you the removal of these men from this bureau, was active in the affairs of the Employee Representation Association, wasn't he? A. He was on the management committee with me.

Harold C. Dean—For Respondents—Cross

3859

Q. Yes. . And you were all very well satisfied with the way in which that plan was worked, were you not?
A. Yes.

Q. You have testified that that satisfaction was the reason for no interest by employees in these other or-

S. M. 1548

ganizations? A. Yes.

Q. And do you know whether or not Mr. Waterhouse knew that these employees who were removed from the work order bureau were officers of the Independent Brotherhood of Utility Employees, who had just recently organized? A. I don't know whether he knew any more about it than I did or not. I doubt it.

3860

Q. So you two gentlemen, chairman and member respectively, of the management committee, passed on the question of the removal of these men? A. Among others, yes.

Q. Who were the others? A. Well, the head of the inventory department for one.

Q. Was he also a member of the management committee? A. No.

Q. All right. A. The head of the auditor's department.

3861

Q. Was he a member of the management committee? A. No.

Q. How about the head of the work order bureau? A. No, I did not discuss it with the head of the work order bureau.

Q. Who was he? A. Mr. Mehrtens.

S. M. 1549

Q. Now, Mehrtens was the man who should logically make recommendation to you regarding persons work-

3862

Harold C. Dean—For Respondents—Cross

ing under him? Isn't that so? A. Well, why not Mr. Hausenbauer? They worked under him too, or Mr. Brown who was over Mr. Hausenbauer.

Q. Well, now, I don't know. A. I wouldn't say Mr. Mehrtens because he didn't employ them directly, you see they were three or four lines or organization down below Mr. Mehrtens.

Q. Well, now, who was the man then in the work order bureau who recommended to you that these men should be let go? A. Mr. Hausenbauer.

3863

Q. Did he sit with you and the personnel director in consideration of the men that should be left out? A. Yes.

Q. What was his position? A. He is auditor.

Q. And is he also a member of the management committee? A. No.

Q. All right. Now, as auditor, is he immediately in charge of the work order bureau? A. Oh, no, he has several bureaus.

Q. Who is in immediate charge of the work order bureau? A. Mr. Mehrtens.

Q. And Mr. Mehrtens' immediate superior is who?

3864

S. M. 1550

A. Mr. Hausenbauer.

Q. Yes. And Mr. Mehrtens was not consulted in regard to the records of these men? A. He undoubtedly was, not by me.

Q. Not by you? A. No.

Q. Did you discuss with Mr. Hausenbauer the question of whether or not Mr. Mehrtens had been consulted in that regard? A. I did not discuss that particularly. He has to find out his own information. I didn't ask him how he finds it.

Q. I see. A. I am sure he did.

Harold C. Dean—For Respondents—Cross

3865

Q. You think he did? A. Oh, I am sure he did. I know how he works.

Q. Yes. Well, you don't know that he did? I mean, I just want to know if you know. A. No, I don't know.

Q. Yes. Mr. Kennedy and Mr. Emler were the remaining officers of this local of the Brotherhood of Utility Employees. Did you know that? A. No. Was Mr. Emler an officer of it?

Q. Perhaps you are right. I should say, if I recall his testimony, as you evidently do, that he was an active member? A. Well, I don't know. I don't think he 3866

S. M. 1551

was very active myself, but possibly he was.

Q. Well, Mr. Kennedy, we will agree was. Is that right? A. Yes.

Q. And he was president of the National Association? A. Well, I don't know that. There were so many different changes in the organization. If you pin it down to some particular time, I don't know what he was.

Q. Well, at the time he was discharged or laid off, he was an officer of the Brotherhood of Utility Employees. Is that right? A. I don't know whether he was or not. 3867

Q. You knew he was active in that organization? A. I knew he had been.

Q. Or you knew he had been active in it? A. Yes.

Q. All right. And you say he was employed in the overhead bureau? A. That's right.

Q. How many men did you say were employed in that bureau? A. At that particular time?

Q. Yes. A. 336.

Q. And Mr. Emler was also in the bureau at that time? A. That's right.

3868

Harold C. Dean—For Respondents—Cross

Q. And did you have to get rid of these men too be-

S. M. 1552

cause of the surplus employee problem? A. Yes, it was a different problem but there was still a question of surplus men for the work to be done.

Q. Yes. And when was it brought to your attention that you would have to get rid of certain of the overhead bureau men? A. It had been a continuous problem.

3869

Q. Since when? A. Well, I know since 1932.

Q. Yes. And how many men had been let out from the overhead bureau from 1932 until these two people were discharged? A. 66.

Q. Yes. And how many men have been let out since? A. Up to the end of last year, that is the last figure I have, seven more I think.

Q. Seven more? A. I think so.

Q. Yes. In other words, seven more since their discharge? A. That's right.

Q. Does that include them? A. No, let's see—I don't know, maybe it does.

3870

Q. Yes. A. I am not sure on that.

Q. All right, and what was the status for your letting these men go? A. You mean how do we pick them.

S. M. 1553

Q. How did you pick them? A. The supervisor selected them to apply for these jobs in the New York Edison Company, thought they ought to be able to fill the jobs.

Q. Who was the supervisor? A. Well, the supervisor was Mr. Werner.

Q. Was Mr. Werner a member of the management committee? A. No.

Harold C. Dean—For Respondents—Cross

3871

Q. Was Mr. Werner the man who reported to you on this question? A. No.

Q. Who did? A. Well, Mr.— the personnel director did a great deal of this work, you see.

Q. The same Mr. Waterhouse? A. Mr. Waterhouse was in very close touch with all the departments and bureau heads. Of course, I don't know that Mr. Waterhouse didn't also speak to Mr. Mehrtens. You spoke of Mr. Mehrtens a while ago. He was close to all the bureau heads.

Q. That was his job, really? A. That is his job, yes.

3872

Q. Do you recall whether or not other men were chosen with Mr. Kennedy and Mr. Emler to be let out at that time? A. Yes.

S. M. 1554

Q. Who were they? A. On that particular day, for instance, there was another man.

Q. Who was he, do you remember? A. I have forgotten his name.

Q. Has he since been re-employed? A. No.

Q. You are sure of that? A. Yes, I recollect, I don't know what his name was, but I know he went to either Sweden or Norway shortly after that.

3873

Q. What did he do, resign or leave? A. He was laid off, the same as the others.

Q. Do you know how long he had worked for your company? A. I know he had worked a longer time than either Kennedy or Emler.

Q. Yes. How many other men that day? A. Those are the only ones.

Q. Do you know what seniority both those men had with relation to the balance of the men in the bureau? A. Yes, I have already testified to that. I have it here. Would you like to have it again?

3874

Harold C. Dean—For Respondents—Cross

Q. Yes. A. There were 64 men who were employed prior to Mr. Kennedy's last employment; 64 first grade linemen. I mean they were first grade linemen at the

S. M. 1555

time of his layoff, and there were twelve who had been employed more recently than he, or more recently than Mr. Emler. I think I can say that I have that reversed. I think Mr. Emler has the longer seniority than he has. Mr. Kennedy has the lesser.

3875

Q. So there were some remaining men with less seniority? A. Oh, yes, there were twelve.

Q. Twelve, but then there were some in between? A. There were six in between Mr. Emler and Mr. Kennedy.

Q. Well, how did you decide on the basis of the records that you had before you at that time which men should remain of those who had less seniority? A. Considering their work, the quality of their work.

Q. Their records, considering their records? A. Their records.

3876

Q. It wasn't like the other bureau where you had no records? Is that right? A. No, we had established record rating cards in the intervening period, rating cards of all employees.

Q. When had the rating card system been introduced in relation to the time of their discharge? A. Well, I don't remember.

Q. Not very long before, was it? A. Well, it could not have been more than say seven months before.

Q. Seven months before? A. Yes.

S. M. 1556

Q. And who was in charge of the rating? A. The supervisor or assistant supervisor is the one who made the rating.

Q. Didn't the foreman put down on this card his rating of the man's work? A. Not the foreman.

Q. The supervisor? A. Of course the foreman was undoubtedly consulted.

Q. Yes. And if the foreman or the supervisor decided— A. It was the assistant supervisor in this case, you see.

Q. If the assistant supervisor decided that a man was good or bad, or fair or poor, that would be the record?

A. Yes sir. Of course in some cases the record speaks for itself, they have a rating as to their attendance.

3878

Q. Yes, now that brings up the question of Mr. Kennedy's prolonged absence in the period preceding his layoff or discharge? A. That's right, yes, he was away certain times during the preceding twelve months.

Q. Do you know what the reasons were for Mr. Kennedy's absence from work? A. As far as I know overhead line work was too severe for him.

Q. Isn't it true that the doctors of the company in-

S. M. 1557

structed Mr. Kennedy to stay at home during those periods? A. Well, he came in and was sick, of course they would tell him to go home.

3879

Q. Well, I mean, I don't know, I am just asking you for information. A. Well, you don't think that a doctor looks these men up and says, "Now, you look sick, go home."

Q. Well, I don't know. A. If a man comes into the office and says, "Doc, I am sick—"

Q. You may have awfully good doctors—in any event, he does not stay home for any holiday. He was home because he was sick in those periods, isn't that so?

A. I assume so.

Q. He was home sick because he got sick working for

3880

Harold C. Dean—For Respondents—Cross

your company, isn't that so? A. Well, that is not always the case. I don't know that.

Q. That was the diagnosis of the doctors of your company, isn't it? A. Well, not necessarily, you don't always get sick working for the company.

Q. Well, doing the job that he was supposed to do for the company? A. He might have been out too late the night before and caught cold.

Q. Well, was that the diagnosis? A. I don't know.

3881 S. M. 1558

Q. Well, didn't you advise yourself at the time you let Mr. Kennedy go whether or not he had been absent because of service to the company under trying circumstances or because he had been out late the night before? A. No, I did not.

Q. All right. So that when Mr. Kennedy testified as he did that he became ill because of work that he had done for the company you do not contradict it, do you? A. No, sir, I just report that he was away 22 per cent of the time for one year and 16 per cent of the time the previous year.

3882

Q. But it is not the practice of your company— A. And you would not consider him one of the most desirable linemen if you had to have him with a record like that, would you, if you had to get that work done?

Q. Well, it is not the practice of the company simply to discharge a man because he happens to have gotten sick in pursuant to his duties? A. No, but the assistant supervisor certainly has to take into consideration a record of attendance, a person away 22 per cent of the time, you can't run the company that way.

Q. Regardless of the reason for his having been absent? A. That is true.

Harold C. Dean—For Respondents—Cross

3883

Trial Examiner Gates: We will take a five-minute recess.

S. M. 1559

(Whereupon a short recess was taken.)

AFTER RECESS

Q. (By Mr. Moscovitz) And six weeks of that time was spent in the company hospital, I think? A. The Green Mountain Lakes Farm.

Q. The Green Mountain Lakes Farm? A. Yes, he was up there twice, I believe.

3884

Judge Ransom: It is a sanitarium.

Q. (By Mr. Moscovitz) A sanitarium? A. Yes.

Q. At the request of the company doctor because of sickness contracted while at work? A. Well, I just—I should say at the request of the company doctor.

Q. Well, as I understand the record, that was the fact? A. These employees don't get sick to please a doctor.

Q. No, I don't say they got sick to please a doctor. A. They don't go up there to please the doctor either.

3885

Q. I say he went up there at the request of the doctor? A. I would not say that. The doctor said he was a fit patient for it.

Q. Well, he got sick and then the doctor recognizing his illness advised him to go to this sanitarium? A. Perhaps he did, I don't know whether he advised him or whether he asked for permission to go.

S. M. 1560

Q. Well, you don't know how he happened to get up there? A. No.

Harold C. Dean—For Respondents—Cross

Q. All right now, Mr. Grulich has made an application for transfer to another job? A. Either in 1934 or 1935.

Q. Either in 1934 or '35, Mr. Hausenbauer had marked his service record under his jurisdiction as excellent? Were you advised of that record which was in your personnel files? A. No, I did not know that record existed, it has been introduced here. I haven't seen it if it has.

Judge Ransom: It was shown in Mr. Grulich's statement.

Q. (By Mr. Moscovitz) This is my statement on the basis of information given to me by Mr. Grulich? A. Oh, that's different, I don't know about that.

Q. All right, you did not see any of the records in the personnel files on this question? A. No.

Q. Did you? A. Well, no, Mr. Waterhouse undoubtedly had access to everything in the personnel files, if there had been anything like that he would have told me about it, certainly.

Q. Did you know that on the date that Mr. Kennedy was let go that a Mr. James Stein was also called up as to the fourth person of the day to be laid off or discharged? A. No, I don't recollect it.

S. M. 1561

Q. Yes, and that Mr. James Stein was after interviewed by the person doing the laying off or the discharging, was sent back to his job, that Mr. James Stein was the only one of the four who is not a member of this Brotherhood of Utility Employees? A. No, I don't know, was the third one a member of the Brotherhood, I did not know that.

Q. Well, there was a Mr. Kennedy? A. Yes.

Harold C. Dean—For Respondents—Cross

3889

Q. Mr. Emler? A. Yes.

Q. Mr. Backe? A. Was Backe a member of the Brotherhood? Was that the name of it at that time, the Brotherhood?

Q. The Brotherhood of Utility Employees? A. What was that?

Q. That was the name of it. A. I didn't know it.

Trial Examiner: The testimony here is that he was not a member of the Brotherhood, as I recall it.

Mr. Moscovitz: Well, the record will speak for itself.

The Witness: I did not know he was a member.

Mr. Moscovitz: I don't have a recollection of it.

Q. (By Mr. Moscovitz) All right then you don't have a recollection of James Stein? A. No. I don't.

S. M. 1562

Q. Now seven persons who were discharged since Mr. Kennedy's discharge, Mr. Emler's discharge, the figure may or may not include Mr. Kennedy, were they discharged immediately after Mr. Kennedy and Mr. Emler? A. Well, as a matter of fact that is the net, isn't it, the net reduction, there have been transfers around, some men were transferred as I recollect it back from the inventory department to the line department to save their being laid off in the inventory department and others were laid off in the line department.

Q. Well, were any of those seven men transferred to other departments, rather than being laid off? A. I don't know that.

Q. You don't know? A. No.

3890

3891

3892

Harold C. Dean—For Respondents—Cross

Q. But when you say that seven men were laid off or discharged since Mr. Emler and Mr. Kennedy it may be that they were transferred to other departments rather than being laid off? A. Well, there was a net reduction of seven. Now, of course you know what work a lineman can do, he can't very well be transferred to other departments in the Queens Company without affecting his employment there.

Q. Yes. Were these two men sent to be considered for wiring work? A. Wire men, yes, that is inside con-

3893

S. M. 1563

struction.

Q. And was that by consent of the company to whom they were sent? A. Yes, they advised us that they needed some men.

Q. And that they needed men for that purpose? A. That is right.

Q. When were you advised of that? A. Oh, just—

Q. Before? A. Just the day before they went, I suppose, or shortly before.

Q. You considered these two men capable for that work? A. We thought so, yes.

3894

Q. And you were advised by the company to whom they were sent that they were not qualified, is that right? A. Well, they said that the men replied that they did not have any experience in that kind of work and could not do that kind of work.

Q. And they were sent back? A. So they came back.

Q. So they went back and were laid off, is that right?

A. That's right.

Q. Did you send any men after that to do this wiring

S. M. 1564

work from this same bureau? A. I am not sure whether

we did or not. I know on previous occasions we had sent men from the departments, on a short time after that we had a spurt of work in connection with electric drain installations and we put back people from the Edison Company temporarily that we had previously sent over since then. Other people have been sent over to the Edison Company. I don't know the exact answer to that.

Q. Well, in your consideration of the records of the other three men of which Mr. Wagner was one, you took into consideration special circumstances, didn't you, of the particular employees? A. Well, now, you mean the other three men who were laid off at that time?

3896

Q. Yes, I mean Mr. Wagner and Mr. Grulich and Mr. Wersing? A. Yes.

Q. Now, you testified that the prime consideration was whether or not they were efficient, is that right? A. That's right.

Q. Mr. Wagner, you testified, was above average in his record? A. That's right.

Q. Is that right? A. Yes.

Q. And you say that marriage wasn't a prime consideration, is that right? A. No, it was not the overwhelming consideration.

3897

S. M. 1565

Q. Now, do you know that Mr. Wagner, who was above average in his work was also the sole support of his mother? A. No, the record don't show that. When you get down to records you know everybody can prove that he is supporting a large part of the unemployed so if he is married and has children, that is the record.

Q. You don't inquire as to what the load of the particular employee is? A. No, as soon as you start to inquire, the employee will have plenty of dependents.

3898

Harold C. Dean—For Respondents—Cross

Q. And the fact— A. If he hasn't he will get them right away.

Q. And the fact that Mr. Wagner had this support was no determination— A. I don't even know now, maybe his mother has been supporting him throughout this period of unemployment.

3899

Q. So that the thing that you would be concerned with and that was really important was whether or not the man was married, even though he might have been married to Doris Duke? A. I think if we knew he was married to Doris Duke we would not have considered that.

Q. But your record would have shown that? A. I think it would, no special place on the card except under remarks.

S. M. 1566

Q. Has there been a layoff of men in the overhead bureau in the last few weeks? A. Well, perhaps there has. I don't know. My duties have been changed somewhat since the first of the year.

3900

Q. Would your figure of seven include any of the men that might have been laid off? A. No, that was the figure up to the end of 1936. Now, that figure of seven, as I say, is a net figure. I saw the personnel records and the gross number of reductions is greater than that, but the overhead bureau had to take back some people from other departments.

Q. Weren't these two men, Mr. Emler and Mr. Kennedy, taken away from the job that they were working on? A. Oh, I heard them testify to that.

Q. At the time they were laid off? A. Well, as I recollect from their testimony, they were installing an underground service in a house on the outskirts of Flushing and they took them away. Well, that job takes a

Harold C. Dean—For Respondents—Cross

3901

matter of hours, or a day or so, you know, the object of taking them away from that being to let somebody else do the job so they wouldn't be laid off. So it isn't any particular job that a man is on. They are always taken off at five o'clock. I think you are trying to show that they were taken off—

Q. No, I will tell you what I am trying to show. I

S. M. 1567

am trying to show that there was plenty of work to be done by these men and by the bureau. A. That wouldn't show that.

3902

Q. It wouldn't? A. The fact that there is plenty of work to be done this day or tomorrow or the next day doesn't mean there is plenty of work.

Q. It doesn't? Now how many men had been laid off within the three months period preceding Mr. Emler's and Mr. Kennedy's layoff? A. The three months period?

Q. Yes. A. I don't know.

Q. Were there any? A. Undoubtedly there were.

Q. Do you recall when the last man was laid off, discharged, in relation to— A. No, I did see a record and there was continuous decrease in employment from 1932 on.

3903

Q. Well, does your production record show whether or not there was a decrease in work for these men or an increase in work, during that same period? A. No, it has been exceedingly difficult all through this depression to find enough work to keep the men busy.

Judge Ransom: Now, in the overhead bureau you mean?

S. M. 1568

The Witness: Yes, in the overhead bureau.

3904

Harold C. Dean—For Respondents—Cross

Q. (By Mr. Moscovitz) We are just discussing the overhead bureau? A. Yes.

Q. Are you still engaged in the reduction of forces? A. Yes.

Q. In the overhead bureau? A. In the overhead bureau, yes.

Q. What figures can you give me which would show that you are still engaged in a reduction of forces in the overhead bureau? A. I don't have any figures. Subsequent to—

3905 Q. 1936? A. 1936, for the first four or five months of this year.

Q. Yes. A. I do know people have been laid off.

Q. Do you know in what bureaus? A. No, but in the distribution department.

Q. In the overhead bureau? A. Undoubtedly so.

Q. Well, do you know? A. No, I don't know, but I do know there have been a gross number of men laid off from the distribution department. I have seen that figure.

Q. Did you gentlemen take into consideration when

3906

S. M. 1569

you let Mr. Kennedy and Mr. Emler go the fact that they were both qualified to do overhead work and other ground work? A. We took into consideration the experience that they had had with the company. They should have been able to do wiring work, not the most skilled switchboard wiring, but wiring work.

Q. That was in consideration for a job in a different company? A. That's right, that is what I thought you meant.

Q. No. Your best qualified men or your most useful men in the overhead bureau are men who can do both overhead and underground work, isn't that right? A.

Well, not necessarily. Of course, we have a great many men that can do that, because that is what we have been compelled to have them do for several years past now. Practically all the line gangs do overhead and underground work.

Q. The men that were in the overhead bureau at the time of the discharge of Mr. Emler and Mr. Kennedy were not all qualified to do overhead and underground work, were they? A. I would say practically all of them were who were first grade linemen. Some of the work they had to do was much less skilled than they were paid for. A first grade lineman gets pretty good money and the man that digs a trench to put a duct in does not get so much money. Now, Mr. Kennedy has dug trenches because there wasn't anything else to do. Now, they don't brag about their ability to dig trenches. It

3908

S. M. 1570

is just a case of making work for them. Cable splicing is another thing we have to be trying to break the linemen into, cable splicing, but so far I don't think Mr. Kennedy has done anything but some low tension splicing.

3909

Q. Was it taken into consideration when they were let out that they were able to do underground work as well as overhead bureau work? A. That was true of the whole bureau.

Q. Your figure is that they were all able to do that. A. A first class lineman was able to do the underground work, should have been able to do the underground work that they did on occasions.

Q. Well, it is true, isn't it, that as a rule the overhead men were not qualified to do both overhead and underground work, isn't it? A. Prior to 1932, most of them were not, but subsequent to that I wouldn't say they were not qualified.

3910

Harold C. Dean—For Respondents—Cross

Q. Haven't had experience in that? A. Haven't had experience, but they got the experience very shortly.

Q. But Mr. Kennedy and Mr. Emler were men qualified and experienced in both kinds of work; weren't they? A. Yes, but we would have preferred to have men do that kind of work who were more experienced in the underground department, and if we had not

S. M. 1571

3911

been short of line work, we would never had had them do that kind of work.

Q. Did you have men who were experienced in that kind of work? A. Oh, yes.

Q. Were they men who had less seniority than these men? A. I don't know. For instance, in the cable splicing bureau—

Q. Yes. A. There were probably some who had less seniority than they but who were more skilled.

Q. That is a surmise on your part? A. Well, I know from the record.

3912

Q. What record are you referring to? A. Well, the record of employment, that we have cable splicers who had been employed about the same time Mr. Kennedy was, perhaps a little later, good cable splicers.

Q. Do you know too that you had men left in your employ at the time these men were let out, who had more experience in both kinds of work than they had had? A. Oh, yes, men who were infinitely superior.

Q. Did you have men who had less experience? A. I don't believe so.

Q. And less seniority? A. Well, everything considered, considering— Possibly less seniority. There were, as I testified, a few people who had less seniority than they, not very many.

S. M. 1572

Q. What is the basis for your saying that these few also had more experience? A. Which few?

Q. The few with less seniority? A. I don't think I said that.

Q. Well, then, do you say that the few who had less seniority also had less experience in this work than Mr. Emler and Mr. Kennedy? A. Not necessarily, you may have been with the company two years and had less experience, but you might be a much better working man from point of view of production and quality of your work.

3914

Q. That's true as a general principle, but your determination of that skill at this point, as you sit on the stand, is not based on any records that you have seen.

A. But you are asking about experience. I think you are conflicting that with seniority.

Q. No. I want to know if you know whether or not there were less in the employ of the company, men with less experience in this work than Mr. Emler and Mr. Kennedy? A. Well, I don't know what you mean by experience. You don't mean seniority?

Q. I don't mean seniority? When I talk of seniority, I mean length of service. A. Well, what is the basis for knowing what experience is then?

3915

S. M. 1573

Q. I am just asking you. A. I don't understand your question.

Q. All right, I can imagine where a man would work for a very short period of time for a company and have more experience in a kind of type of work than another man, despite the fact they work in the same bureau. I am asking you whether or not there are men in this bureau who were left employed by the company

3916

Harold C. Dean—For Respondents—Cross

who had less experience in their work than Mr. Kennedy and Mr. Emler? A. You mean by experience in their work, in this underground work?

Q. The underground work, yes. A. That would be possible because one man might have been so exceptionally good on overhead work that they wouldn't waste his time putting him in on underground work, but a man that wasn't so good they might have digging trenches.

3917 S. M. 1573-A

Q. But if he was good at his overhead work and good at his underground work, he would be considered an awfully good man, wouldn't he? A. If he was especially good at overhead work he might not have a chance to do underground work of certain characters.

Q. Do you use first grade linemen generally to do underground work? A. Not generally, only through such periods as we have been through.

Q. So most first grade linemen who are overhead men have done underground work; haven't they? A. At the present time in the Queens Company!

3918 Q. Yes. A. Probably so.

Q. That's all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Gates) I have two or three questions. You gave the figure 135 being laid off from the inventory bureau. A. Inventory department.

Q. Shifted into other departments? A. That's right.

Q. Does that mean that an equal number were shifted out and onto the streets from the departments,

S. M. 1574

or did they just fill jobs? A. No, they were shifted out.

Q. So there was a net reduction of 135? A. Possibly a few of those might have been shifted to some other company, but there was a net reduction of 135.

Q. As I understand it, these jobs over here in Manhattan with Consolidated Edison were open before the New York & Queens selected Mr. Kennedy and Mr. Emler to go over and apply for them. Is that correct? A. Yes.

Judge Ransom: One other man also went.

The Witness: Mr. Bakke also went.

Mr. Berton: Mr. Stein.

3920

Trial Examiner Gates: I am referring only to those involved in this proceeding.

Q. (By Trial Examiner Gates) As I understand, my recollection of each part of the testimony, as to the interview on the Consolidated Edison, it was a question of taking a considerable reduction in pay. Do you know anything about that? A. Well, it would depend upon their qualifications, how they would fit into the jobs. I would say not necessarily. I would say that the pay these men were getting was around \$43, and would be in line for a wireman's job. We thought that they ought to get the same pay.

3921

Q. If they weren't offered a wire man's job, but

S. M. 1575

where offered a lesser job at less pay? A. Well, I think the answer is that they did a very poor job of selling themselves, that they acted as though they didn't want the job. In fact, I think that is true, that they preferred to have the two weeks' pay for each year of employment. It looked pretty good at that time. I think the testimony shows that they debated upon whether they would go over at all or not.

3922

*Harold C. Dean—For Respondents—Redirect—Recross***REDIRECT EXAMINATION:**

Q. (By Judge Ransom) If they were qualified as wire men, they would be within the same range of pay substantially— A. Wiremen get as good pay as line-men.

Q. If they didn't qualify as wire men but had to go in as wire men's helpers, the pay would be less? A. Yes.

Q. (By Trial Examiner Gates) Would their seniority transfer? A. Yes.

3923

RECROSS EXAMINATION:

Q. Would it be a same rank job? A. Oh, yes.

Q. First grade lineman or wireman? A. Yes, and also you wouldn't be exposed to the elements and you might not be sick as much of the time.

Q. Did you take that into consideration when you sent them over? A. I don't know, maybe the supervisor

S. M. 1576

did.

3924

Q. You don't know, though, as a matter of fact, whether they were offered jobs as wiremen when you went over, do you? A. I think they did not get that job. I think right away they killed it with, "We are not wiremen."

Q. So there was never any question of that job being offered to them? A. I think that is the story.

Q. (By Judge Ransom) That is the substance of the report you received back? A. Yes, the supervisor of the New York Edison reported back and said, "They aren't wiremen, they couldn't do the work," and they didn't interview them.

(Witness excused.)

Judge Ransom: If the Examiner please, you will recall that at the period before the recess, the question came up of the taking of testimony on behalf of the respondents. The suggestion was made, very courteously, I think, by your Honor, that I might place the matter before the National Labor Relations Board so that they would have the full picture before them.

I did that by letter dated June 28th, and I have a reply from the secretary of the Board under date of July 2nd. I take it that your Honor is familiar with the nature of that reply. 3926

S. M. 1577

At this stage I will offer in evidence the letter of June 28th to the National Labor Relations Board and the reply of the Board dated July 2nd.

Trial Examiner Gates: There being no objection, they are admitted.

(Documents referred to received in evidence and marked Respondent's Exhibits 25 and 25-A, respectively.) 3927

Judge Ransom: I would like to call to the stand Mr. Selah S. Tompkins.

Trial Examiner Gates: In view of the ruling of the Board, I am afraid that—

Judge Ransom: May I be heard briefly on that?

Trial Examiner Gates: You may be heard and you may make an offer of introduction of witnesses.

Judge Ransom: I want to call your Honor's attention to this:

3928

Proceedings

When we were discussing this matter here on June 24th, we were dealing with the problem presented by the absence of Mr. Carlisle in Europe and Mr. Dean in Milwaukee. I said I should not have much of any testimony aside from their testimony. They were the witnesses whose presence was altogether essential in behalf of the respondents. Anything else would be short and witnesses few. There was no suggestion at that time on the part of your Honor, or on the part of counsel for the Board, or on the part of counsel for

3929

S. M. 1578

the respondents, that any intermediate date be set for the taking of any such incidental testimony. There was no such date set. To my mind no opportunity was presented.

We adjourned late on the 24th until today, and the decision was reserved. Now, I submit that the respondents would not have their fair opportunity for hearing before this Board, if the testimony here in behalf of the respondents were restricted to that which has already been given. I should think also that the Board would wish to have the facts of this matter.

3930

We have listened here to the testimony in behalf of the government since the 3rd of June, with a few intervals. You have listened to the testimony in behalf of the respondents for one day.

Now, I ask your Honor, in the interests of justice and a fair trial, for a presentation to this Board of facts which they ought to have if they wish to make a determination upon facts, that the testimony of two witnesses who will not be long be also taken. The first of those is Mr. Tompkins.

I do not think that I ought to be left to merely an offer of proof. I am not concerned about this case which presents really important issues, to have some technicality about whether the respondents were denied a fair and full hearing, or were arbitrarily excused from the presentation of their case. We want to give you the facts, and we ask

S. M. 1579

that that opportunity be afforded.

Trial Examiner Gates: Well, I am sure I want the facts and I am sure the Board wants the facts; just to keep the record straight, as to an adjournment on June 24th I believe you will agree that I also mentioned that we might carry over to the following day for the production of any witnesses that you cared to have at that time.

3932

Judge Ransom: I think that your Honor is, of course, correct, that was one of several suggestions that was made and I think your Honor will likewise bear me out, I think I am right in saying, I certainly got the impression, that there was no particular desire on the part of either counsel on either side or perhaps for your Honor to have a hearing at some intermediate date for just one or two short witnesses. There was a sort of a feeling, at least I got the impression, if it was going over at all, that it had better go over and leave the intervening time for other activities of counsel for the Board and counsel for the respondents.

3933

Now, I think we ought to be allowed to put in proofs, I venture even to say that I would think that if the Board realized the full aspect here of what is going on here, that they should and would feel the same way about the circumstances, neces-

3934

Proceedings

sarily sitting in Washington with a multiplicity of things brought to them from all over the coun-

S. M. 1580

try, they don't know the atmosphere of a trial such as this and I believe that both sides have tried in this case to bring out the facts in a fair way as they saw them, and I don't believe there has been a waste of time here and I submit it is simple justice and fair play.

3935

I call your attention also to the fact that over my objection this morning, your Honor allowed the Board, the government, to amend its complaint to conform to proof. Now, I assert an absolute right under those circumstances to present proof and meet such changes and such issues and facts as your Honor allowed.

Trial Examiner Gates: I am afraid I consider myself bound by the decision of the board in respect to eliciting testimony.

3936

Judge Ransom: Won't your Honor do this, just quietly take this testimony and if the Board does not want to consider it, why, about all that anybody is out of pocket is paying for the minutes and they won't be long and we won't take up much of your Honor's time, and I think the Board would rather have the testimony than not have it, because somebody, I say with all due deference, I think somebody will be sending the case back to take this testimony and I would rather take it this week than during the Christmas holidays. I might call your Honor's attention to this: The testimony which I am now immediately asking an

S. M. 1581

opportunity to offer relates to the circumstances of the discharge of an employee whose name is not in the charge, was not in the complaint of which notice of hearing was served, is in this case at all only by amendment.

Now, I submit that under those circumstances there might be some propriety in letting us meet the issue which we did not come here to try but which we have found ourselves under the necessity of trying by reason of an amendment granted after this case was well underway.

3938

Trial Examiner Gates: You are now referring to Solosy?

Judge Ransom: Solosy.

Trial Examiner Gates: Off the record.

(Discussion outside the record.)

Judge Ransom: On behalf of each of the respondents, I respectfully except to the limitation of the testimony in behalf of respondents contained in the Board's letter to respondent counsel under date of July 2nd, on the ground that this limitation, if enforced at all, amounts to a denial of fair hearing, amounts to a denial of due process, withholds from the respondent an opportunity of meeting the issues to which the complaint as amended recently during the trial relates, including the meeting of the issues to which the complaint as amended today relates and that we regret and respectfully except to such a limitation.

3939

Proceedings

3940

S. M. 1582

Now, in behalf of respondents, I offer to call and offer to show by the assistant chief chemist of the Consolidated Edison Company of New York of the discharge of the one-time employee, Solosy, and likewise the discharge of Ewing had no relation to activities or non-activities or membership on the part of either of them in any labor organization. I offer to show that their work in the chemical control department relates solely to the calibration and operation and testing of instruments and testing of quality of gas in testing stations established by public authority of the state of New York, namely, the Public Service Commission and are entirely local and regulatory in character and in no way relate to any process of manufacture and in no way relate to any process of the distribution of gas within the localities in which it is served.

3941

I further offer to show by the testimony of these witnesses that during recent years a considerable number of the gas plants formerly operated by companies of this group in the Borough of Manhattan and in the Borough of Queens and in the Borough of the Bronx have been wholly discontinued and withdrawn from service; that that has taken place along with a steady reduction in the volume of gas sold and used by the public in the City of New York and that, with that, has gone necessarily a reduction steadily in

3942

S.M. 1583

the force of employees in this chemical department.

The number has gone down steadily from 67 employees in '33, it is down to 52; that the work of Mr. Solosy in his department was no more than average; that the number of the Thomas recording calorimeters to which his work related was being decreased and was decreased and about a third of the number in operation at that time were gone from service; that so far as any other men in the bureau whose tenure of employment was shorter than Solosy's and were not laid off at that time; that they were men of highly trained technical education in chemistry, graduate chemical engineers, whereas Solosy was not anything like their equal in technical, chemical education.

3944

So far as Mr. Ewing is involved in this case, I offer to show that Mr. Ewing's work was the testing of quality of gas in these local regulatory testing stations established by the city of New York; that in the matter of conformance with these regulations, that these duties were performed by these testers alone, who went to these testing stations in residential and other highly congested areas of population and spent long periods of time there alone and that without any desire to say anything unduly unkind, that Mr. Ewing was simply not a proper person to be kept in that position, and in any event with the reduction in force it was logical and right that he be

3945 3

S. M. 1584

removed from that relationship.

I offer to show those facts and develop the full details from the appropriate records of the company. I except to your Honor's refusal or failure to allow me to call Mr. Tompkins and Dr.

3946

Proceedings Closed

Lunn to prove those facts by oral and documentary testimony.

I also except the curtailment of respondent's case in all other respects with the limitation to the testimony of Mr. Dean and Mr. Carlisle. Under those circumstances, I have no alternative but to bring respondent's case to a regretful but forcible conclusion.

Trial Examiner Gates: Is there anything further?

3947

Mr. Moscovitz: No.

Judge Ransom: I should like an opportunity to submit a brief.

Trial Examiner Gates: Do you wish to submit a brief? It may be submitted to me in care of the Board in Washington within ten days.

Judge Ransom: That will be very agreeable.

Trial Examiner Gates: The hearing is adjourned.

† (Whereupon, at 4:25 o'clock p. m., July 6, 1937, the hearing closed.)

3948

CHARGE FILED WITH THE BOARD BY THE UNITED ELECTRICAL AND RADIO WORKERS AFFILIATED WITH THE COMMITTEE FOR INDUSTRIAL ORGANIZATION, DATED MAY 5, 1937.

[Printed at page 4, as a part of the pleadings]

COMPLAINT AND NOTICE OF HEARING ISSUED BY THE BOARD, BY ITS REGIONAL DIRECTOR FOR THE SECOND REGION, DATED MAY 12, 1937 (WITH THE SUBSEQUENT AMENDMENTS INDICATED).

3950

[Printed at page 7, as a part of the pleadings]

ACKNOWLEDGMENTS AND PROOFS OF SERVICE OF THE COMPLAINT AND NOTICE OF HEARING.

[Printed at page 17]

NOTICE OF MOTION BY RESPONDENT COMPANIES, WITH AFFIDAVIT, DATED MAY 17, 1937, FOR PRIOR AND SEPARATE HEARING AS TO JURISDICTION AND TO DISMISS COMPLAINT AND CHARGE FOR WANT OF JURISDICTION.

3951

[Printed at page 19]

AMENDED NOTICE OF HEARING DATED MAY 25, 1937, ISSUED BY THE BOARD.

[Printed at page 34]

AFFIDAVIT OF SERVICE OF AMENDED NOTICE OF HEARING.

[Printed at page 35]

[The remainder of Board's Exhibit No. 1 is not printed, but may be referred to in the Transcript of Record filed.]

STIPULATION OF FACTS FOR THE DETERMINATION OF THE QUESTION OF JURISDICTION.

United States of America
Before the
National Labor Relations Board
Second Region

3953

CASE No. II-C 224

IN THE MATTER
of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies

BROOKLYN EDISON COMPANY, INC.,
NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY,
WESTCHESTER LIGHTING COMPANY,
THE YONKERS ELECTRIC LIGHT AND POWER COMPANY,
NEW YORK STEAM CORPORATION,
CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY,

3954

*Respondents,***and**

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA,
affiliated with the COMMITTEE FOR INDUSTRIAL ORGANIZATION.

STIPULATION FOR THE DETERMINATION OF QUESTION OF JURISDICTION

DAVID A. MOSCOVITZ,
Regional Attorney,
Second Region,
National Labor Relations Board,
No. 45 Broadway,
New York City.

WHITMAN, RANSOM, COULSON & GOETZ,
Attorneys for Respondents,
Appearing specially and only for the purposes
stated in the Notice of Motion dated May 17, 1937,
No. 40 Wall Street,
New York City.

June 2, 1937.

CONTENTS

	Page No.	
I. Territory and Corporate Organization of the Respondents	2	3956
II. Employees of the Respondents.....	21	
III. Scope of Business and Operations.....	24	
IV. Management and Manner of Carrying on Operations	32	
V. Electric Interconnection with New York Power and Light Corporation.....	41	
VI. Purchase of Materials and Disposal of Residual By-products	45	3957
VII. Data as to Particular Consumers.....	54	
VIII. New York State Labor Relations Act (Laws of 1937, Chapter 443)	69	

3958

Board's Exhibit No. 2

United States of America
Before the
National Labor Relations Board
Second Region

IN THE MATTER
 of

3959

CONSOLIDATED EDISON COMPANY OF NEW
 YORK, INC., and its affiliated Com-
 panies

BROOKLYN EDISON COMPANY, INC.,
 NEW YORK AND QUEENS ELECTRIC
 LIGHT AND POWER COMPANY,
 WESTCHESTER LIGHTING COMPANY,
 THE YONKERS ELECTRIC LIGHT AND
 POWER COMPANY,
 NEW YORK STEAM CORPORATION,
 CONSOLIDATED TELEGRAPH AND ELEC-
 TRICAL SUBWAY COMPANY,
Respondents,

Case No. II-C
 224

3960

and

UNITED ELECTRICAL AND RADIO WORK-
 ERS OF AMERICA, affiliated with the
 COMMITTEE FOR INDUSTRIAL ORGANI-
 ZATION.

For the purposes of the above-entitled proceeding,
 the following facts are hereby STIPULATED AND AGREED,
 and may be offered in evidence, by or in behalf of the
 National Labor Relations Board or by and in behalf of
 the respondents, with the same force and effect as if
 properly qualified witnesses were called before the

Board and gave under oath sufficient and competent evidence of each of the matters and things herein set out, wholly without prejudice to the right of any party hereto to object to the materiality or relevancy of any such facts; and likewise without any prejudice or disadvantage to the special appearance made by the respondents jointly and severally for the sole purpose of moving to dismiss the complaint and the proceedings upon the grounds of want of jurisdiction more specifically set out in the respondents' notice of motion filed May 17, 1937, and likewise without prejudice to the right of the National Labor Relations Board or the respondents to offer oral testimony or other evidence as to any matter pertinent to the issues in this proceeding.

3962 5

Upon the basis, and for the limited purposes, above stated, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned parties, as follows:

I. TERRITORY AND CORPORATE ORGANIZATION OF THE RESPONDENTS

1. The respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company, are public utility corporations, organized and existing under special or general laws of the State of New York, and are engaged in the business of supplying electric service to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and part of the Borough of Queens, within the City of New York. The respondent Consolidated Edison Company of New York, Inc., is engaged also in the business of supplying gas service to consumers situated in the Boroughs of Manhattan, The Bronx, and part of the Borough of Queens (Long Island City and the Third Ward—Flushing, etc.),

3963 7

3964

Board's Exhibit No. 2

within the City of New York. The respondent Consolidated Edison Company of New York, Inc., conducts the electric business formerly conducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by the Bronx Gas and Electric Company, merged into the Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of the Consolidated Gas Company of New York and that formerly conducted by various gas Companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged into the Consolidated Edison Company of New York, Inc., in 1936. Whenever in this stipulation facts or figures are given as to the Consolidated Edison Company of New York, Inc., the same include, unless otherwise indicated, the pertinent facts and figures as to such predecessor Companies within the period stated to be covered.

3965

3966

2. None of the respondents supplies any kind of service in the Borough of Richmond or in the Fifth Ward of the Borough of Queens (the Rockaway region); and none of the respondents supplies gas service in the Borough of Brooklyn or in any part of the Borough of Queens except Long Island City and the Third Ward (Flushing, etc.).

3. The respondent New York Steam Corporation supplies steam service to consumers situated within a part of the Borough of Manhattan.

4. The respondent Consolidated Telegraph and Electrical Subway Company does not supply electric, gas or steam service to any consumers, but constructs, maintains and operates, under contracts with the City of New York, underground ducts or conduits for electrical conductors, within the Boroughs of Manhattan and The Bronx, New York City.

Board's Exhibit No. 2

3967 5

5. The respondent Westchester Lighting Company supplies electric service to consumers situated in the major part (all except the City of Yonkers and the Towns of Somers, North Salem, Lewisboro and Poundridge) of the County of Westchester, State of New York; and the respondent Westchester Lighting Company supplies also gas service to consumers situated in such major part of the County of Westchester as receives gas service. The respondent Westchester Lighting Company also supplies electric service to consumers situated within a small area in the Borough of The Bronx, in the City of New York, adjacent to Westchester County and formerly a part of that County. The respondent The Yonkers Electric Light and Power Company supplies electric service to consumers situated in the City of Yonkers, Westchester County.

3968 6

**Maps of
territory**

6. Maps showing the territory supplied with electric, gas and steam service, by any of the respondents, together with the location of their principal electric generating stations, substations, gas manufacturing plants, steam generating plants, and various other properties, are hereto annexed and made a part hereof, marked Exhibits Nos. 1 and 2, respectively.

3969 7

**Corporate organization
and local franchises**

7. Each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is a corporation organized and existing under general or special laws of the State of New York for the purpose, and is subject to the public duty, of supplying electric, gas or steam service, to consumers situated within their respective franchise territories as above stated. In addition to the general corporate powers of the respondents,

3970

Board's Exhibit No. 2

they possess, and conduct their operations by virtue of, various local franchises to lay, maintain and operate mains, pipes, wires or other conductors for conducting gas, electricity or steam, in, on, over, under and through the streets, avenues and other public places within the City of New York and in various cities, villages and towns in Westchester County, subject to the terms of such franchises and to such reasonable regulations as the local municipal authorities may prescribe. These franchises were granted in some instances by special legislative Acts of the State of New York, and in other instances by consents of the local municipal authorities in the State of New York.

3971

8. Excepting the respondent Consolidated Telegraph and Electrical Subway Company, each of the respondents is "a public utility company" as defined in Section 2, subdivision 22, of the Public Service Law of the State of New York, and is subject to the jurisdiction and regulatory powers of the Public Service Commission of the State of New York as to its operations, properties, rates, revenues, expenditures, accounts and other respects provided by law. The public obligation of such respondents is to render adequate and continuous service, at rates limited by such regulation, to consumers situated in their respective territories in the City of New York and Westchester County. The respondent Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York. Although affiliated with the Consolidated Edison Company of New York, Inc., through the latter's ownership of its stock, it is not a public utility, within the meaning of the Public Service Law of the State of New York, and does not produce or supply electricity, gas or steam, or sell any product to anybody. Under a contract dated April 7, 1887, modifying a prior contract dated July 22, 1886, with

3972

the Commissioners of Electrical Subways for the City of New York, ratified and confirmed by and subject to express legislative enactment (Chapter 716, Laws 1887), as modified by a contract dated May 15, 1891, authorized by Chapter 231, Laws 1891, the Consolidated Telegraph and Electrical Subway Company provides, constructs, equips, maintains and operates subways, ducts, and conduits for the reception of electrical conductors (other than telegraph and telephone conductors) in the Boroughs of Manhattan and The Bronx, City of New York, within which its operations are wholly conducted. The Consolidated Edison Company of New York, Inc., and the Westchester Lighting Company, occupy space in such ducts and pay rent for the space so occupied.

**Principal and branch offices
of respondents**

9. The principal office of the Consolidated Edison Company of New York, Inc., is at No. 4 Irving Place, Borough of Manhattan, New York City. Branch offices are maintained and operated by the Company at the following locations:

- 157 Hester Street, New York City, New York.
- 129 East 14th Street, New York City, New York.
- 212 West 57th Street, New York City, New York.
- 236 West 72nd Street, New York City, New York.
- 120 East 86th Street, New York City, New York.
- 151 East 86th Street, New York City, New York.
- 32 West 125th Street, New York City, New York.
- 21 Audubon Avenue, New York City, New York.
- 529 Courtlandt Avenue, New York City, New York.
- 3856-58 White Plains Road, New York City, New York.
- 269 City Island Avenue, New York City, New York.
- 310 East Kingsbridge Road, New York City, New York.
- 555 East Tremont Avenue, New York City, New York.

3976

Board's Exhibit No. 2

43 Westchester Square, New York City, New York.
 136-21 Roosevelt Avenue, Flushing, New York.
 35-20 Broadway, Long Island City, New York.

The principal office of the Brooklyn Edison Company, Inc., is at No. 380 Pearl Street, Borough of Brooklyn, New York City. Branch commercial offices are maintained and operated by the Company at the following locations:

3977

566-568 Nostrand Avenue, Brooklyn, New York.
 100-102 Chester Street, Brooklyn, New York.
 10 Howard Avenue, Brooklyn, New York.
 21-23 Snyder Avenue, Brooklyn, New York.
 5119-5123 Fourth Avenue, Brooklyn, New York.
 270-272 South 3rd Street, Brooklyn, New York.
 527-535 Surf Avenue, Brooklyn, New York.

The principal office of the New York and Queens Electric Light and Power Company is at No. 28-19 Bridge Plaza North, in Long Island City, Borough of Queens, New York City. Branch commercial offices are maintained and operated by the Company at the following locations:

3978

69-19 Fresh Pond Road, Ridgewood, New York.
 136-21 Roosevelt Avenue, Flushing, New York.
 39-25 Bell Boulevard, Bayside, New York.
 145-22 Jamaica Avenue, Jamaica, New York.
 219-30 Jamaica Avenue, Queens Village, New York.
 111-16 Liberty Avenue, Richmond Hill, New York.
 35-20 Broadway, Long Island City, New York.

The principal office of the Westchester Lighting Company and The Yonkers Electric Light and Power Company is at No. 9 South First Avenue, in the City of Mt. Vernon, in Westchester County, in the State of New York. A branch commercial office is maintained by these Companies at No. 45 South Broadway, Yonkers, New York.

Board's Exhibit No. 2

3979

Branch commercial offices are maintained by the Westchester Lighting Company at the following locations in Westchester County:

- 237-9 Huguenot Street, New Rochelle, New York.
- 126 North Main Street, Port Chester, New York.
- 1 North Broadway, White Plains, New York.
- 15 North Broadway, Tarrytown, New York.
- 125 Main Street, Ossining, New York.
- 1020 Main Street, Peekskill, New York.
- 55 East Main Street, Mt. Kisco, New York.
- 446 Bedford Road, Pleasantville, New York.
- 562 Warburton Avenue, Hastings, New York.
- 269 Halstead Avenue, Harrison, New York.
- 3996 White Plains Road, New York City, New York.
- 14 Depot Plaza, Tuckahoe, New York.
- 9 North Riverside Avenue, Croton-on-Hudson, New York.
- 268 Mamaroneck Avenue, Mamaroneck, New York.
- 46 East Parkway, Scarsdale, New York.
- 6 Main Street, Elmsford, New York.
- 269 City Island Avenue, New York City, New York.
- 90 Main Street, Dobbs Ferry, New York.
- 111-131 Chatsworth Avenue, Larchmont, New York.

3980

The principal office of the New York Steam Corporation is at No. 130 East 15th Street, Borough of Manhattan, New York City.

3981

The principal office of the Consolidated Telegraph and Electrical Subway Company is at No. 54 Lafayette Street, Borough of Manhattan, New York City.

**Electric generating
stations.**

10. The names and locations of the electric generating stations of the respondent Consolidated Edison Company of New York, Inc., and its affiliated Companies, and their

3982

Board's Exhibit No. 2

approximate capacities, as of December 31, 1936, were as follows:

Name and location of plant	Electrical rating of main generating units in kilowatts	Thousands of kilowatt hours (net) generated in 1936
Consolidated Edison Company of New York, Inc.		
Hell Gate—134th Street and the East River, The Bronx	605,000	1,579,798.0
East River—14th Street and East River, Manhattan	280,000	1,186,296.4
Waterside—38th Street to 40th Street and East River, Manhattan	314,200	309,333.8
Sherman Creek—201st Street and Harlem River, Manhattan	151,000	253,812.6
Port Morris—149th Street and East River, The Bronx (operated under lease from New York Central Railroad)	70,000	44,098.6 ¹ (6 mos.)
Total	1,420,200	3,373,339.4
Brooklyn Edison Company, Inc.		
Hudson Avenue—Foot of Hudson Avenue, Brooklyn	770,000	2,263,240.6
Gold Street—Foot of Gold Street, Brooklyn	101,000	189.2
66th Street—66th Street and New York Bay, Brooklyn	65,000	388.8
Total	936,000	2,263,041.0
The Yonkers Electric Light and Power Company		
Glenwood Station—Glenwood Avenue and Hudson River, Yonkers	20,000	10,440.4 ¹ (6 mos.)
Total for group of Companies	2,376,200	5,646,820.8

¹ From beginning of operation by respondent after July 1, 1936.

3984

Electric substations
of respondents

11. The number of electric substations (exclusive of two switching stations) and their capacity, as of December 31, 1936, operated by the respondent Consolidated Edison Company of New York, Inc., and its affiliated Companies, were as follows:

	Electrical rating of transforming or converting apparatus			
	Converting D. C.		Transforming A. C.	
	No.	Kilo- watts	No.	Kilovolt Amperes
Consolidated Edison Company of New York, Inc.				
Substations supplying one frequency:				
Completely owned	30	461,200	10	260,900
Equipment owned on leased property	3	43,900	2	9,100
Substations supplying both direct and alternating current:				
Completely owned	8	127,300	..	135,000
Total	41	632,400	12	405,000
Brooklyn Edison Company, Inc.				
Substations supplying one frequency:				
Completely owned	4	22,970	7	290,000
Equipment owned on leased property	2	6,200	..	....
Substations supplying both direct and alternating current:				
Completely owned	1	2,000	..	40,000
Total	7	31,170	7	330,000
New York and Queens Electric Light and Power Company				
Substations supplying one frequency:				
Completely owned	..	....	8	261,000
Total	..	....	8	261,000
The Yonkers Electric Light and Power Company				
Substations supplying one frequency:				
Completely owned	..	....	2	128,000
Total	..	....	2	128,000
Westchester Lighting Company				
Substations supplying one frequency:				
Completely owned	..	....	14	296,250
Equipment owned on leased property	..	....	1	300
Total	..	....	15	296,550

3986

3987

**Locations of
sub-stations**

Electric substation buildings of the Consolidated Edison Company and its affiliated Companies are at the following locations:

Consolidated Edison Company of New York, Inc.

- 10-12 Stone Street, New York City, New York.
 100 Water Street, New York City, New York.
 33-43 Gold Street, New York City, New York.
 120-124 Cedar Street, New York City, New York.
 49-51 Park Place, New York City, New York.
 55 Duane Street, New York City, New York.
 8 Elizabeth Street, New York City, New York.
 40-42 Thompson Street, New York City, New York.
 98 Vandam Street, New York City, New York.
 55 Crosby Street, New York City, New York.
 152 Clinton Street, New York City, New York.
 159-161 Greene Street, New York City, New York.
 421-423 East 6th Street, New York City, New York.
 32 Horatio Street, New York City, New York.
 115-117 East 12th Street, New York City, New York.
 27-29 West 16th Street, New York City, New York.
 119-121 West 22nd Street, New York City, New York.
 45 West 26th Street, New York City, New York.
 148 East 26th Street, New York City, New York.
 452 West 27th Street, New York City, New York.
 19 East 32nd Street, New York City, New York.
 308-312 West 36th Street, New York City, New York.
 117-119 West 39th Street, New York City, New York.
 151 East 39th Street, New York City, New York.
 285 Madison Avenue, New York City, New York.
 314-316 West 41st Street, New York City, New York.
 708 First Avenue, New York City, New York.
 32-34 West 48th Street, New York City, New York.
 224-26 East 52nd Street, New York City, New York.
 118-122 West 53rd Street, New York City, New York.

3989

3990

441 West 53rd Street, New York City, New York.
 155 East 60th Street, New York City, New York.
 170 West 64th Street, New York City, New York.
 207 East 73rd Street, New York City, New York.
 123 East 83rd Street, New York City, New York.
 211 West 84th Street, New York City, New York.
 215-217 East 94th Street, New York City, New York.
 117 East 103rd Street, New York City, New York.
 171 West 107th Street, New York City, New York.
 128 East 121st Street, New York City, New York.
 259 West 123rd Street, New York City, New York.
 204 Elizabeth Street, New York City, New York.
 354 West 45th Street, New York City, New York.
 214 West 66th Street, New York City, New York.
 115 West 97th Street, New York City, New York.
 1429 Bronx River Avenue, New York City, New York.
 Welfare Island, New York City, New York.
 Lafayette and Whitlock Avenues, New York City,
 New York:

3992

West 170th Street and Inwood Avenue, New York
 City, New York.

188th Street and Park Avenue, New York City, New
 York.

West 238th Street and Spuyten Duyvil Road, New
 York City, New York.

3993

St. Peters, Westchester and Tratman Avenues, New
 York City, New York.

Laconia and Yates Avenues, New York City, New York.

Brooklyn Edison Company, Inc.

358-368 Pearl Street, Brooklyn, New York.

2-16 Rockwell Place, Brooklyn, New York.

83-93 Lorimer Street, Brooklyn, New York.

34-52 Ainslie Street, Brooklyn, New York.

57-59 Washington Avenue, Brooklyn, New York.

87-93 Jay Street, Brooklyn, New York.

2896-2904 West 12th Street, Brooklyn, New York.

3994

Board's Exhibit No. 2

6501-6511 Fifth Avenue, Brooklyn, New York.
 745-753 Livenia Avenue, Brooklyn, New York.
 10-18 32nd Street, Brooklyn, New York.
 18-22 42nd Street, Brooklyn, New York.
 2014-2024 Coney Island Avenue, Brooklyn, New York.
 35-45 West 9th Street, Brooklyn, New York.
 2502-2512 Tilden Avenue, Brooklyn, New York.
 55-63 Johnson Street, Brooklyn, New York.

*New York and Queens Electric Light and Power Com-
 pany*

3995

34-29 Lawrence Street, Flushing, New York.
 137-06 91st Avenue, Jamaica, New York.
 57-77 Rust Street, Maspeth, New York.
 42-29 Ninth Street, Long Island City, New York.
 100-09 Atlantic Avenue, Woodhaven, New York.
 204-32 Jamaica Avenue, Hollis, New York.
 32-15 58th Street, Woodside, New York.
 212-04 Northern Boulevard, Bayside, New York.
 131-26 Merrick Boulevard, Springfield, New York.

Westchester Lighting Company

3996

Echo Avenue, New Rochelle, New York.
 Washington Street, Mt. Vernon, New York.
 New Street, White Plains, New York.
 Tarrytown Road, Elmsford, New York.
 Cortlandt Street, North Tarrytown, New York.
 Maple Avenue, Mt. Kisco, New York.
 Waverly Avenue, Mamaroneck, New York.
 Dock Street, Hastings, New York.
 Saw Mill River Road, Millwood, New York.
 Main Street, Town of Eastchester, New York.
 Smith Street, Port Chester, New York.
 Market Street, Ossining, New York.
 Woodside Avenue, Briarcliff, New York.
 Central Avenue and William Street, Peekskill, New
 York.

Catskill Aqueduct and Croton Lake Tower No. 345,
Yorktown, New York.

The Yonkers Electric Light and Power Company

24-40 St. Casimir Avenue, Yonkers, New York.
Marco and Smart Avenues, Yonkers, New York.

**Locations of
service buildings, etc.**

Service buildings, shops, store-rooms, garages, etc., of
the Consolidated Edison Company and its affiliated Com-
panies are maintained and operated at the following
locations:

3998

Consolidated Edison Company of New York, Inc.

- 708 First Avenue, New York City, New York.
- 208-10 Elizabeth Street, New York City, New York.
- 617-49 East 14th Street, New York City, New York.
- 4733 Park Avenue, New York City, New York.
- 92-94 Vandam Street, New York City, New York.
- 95th to 96th Streets and 1st Avenue, New York City,
New York.
- 289-315 Rider Avenue, New York City, New York.
- 132nd Street and East River, New York City, New
York.
- East River at 71st Street, New York City, New York.
- 65th and 66th Streets and Amsterdam Avenue, New
York City, New York.
- 65th Street—201 West 65th Street, New York City,
New York.
- 200 West 66th Street, New York City, New York.
- 110th Street and East River, New York City, New
York.
- 1700 West Farms Road, New York City, New York.
- 1838 Webster Avenue, New York City, New York.
- 1812 Carter Avenue, New York City, New York.
- Soundview and Underhill Avenues, New York City,
New York.

3999

4000

Board's Exhibit No. 2

Yates Avenue and Gunhill Road, New York City, New York.

Fowler and Morris Avenues, New York City, New York.

34-54 37th Street, Long Island City, New York.

46 Lawrence Street, Flushing, Long Island, New York.

Harper Street, Flushing, Long Island, New York.

170th Street and 39th Avenue, Flushing, Long Island, New York.

Brush Avenue and Westchester Creek, New York City, New York.

327-31 Avenue A, New York City, New York.

Courtlandt Avenue, at 148th Street, New York City, New York.

York Avenue and 63rd Street, New York City, New York.

514-16 West 147th Street, New York City, New York.

140th Street, Rider Avenue and Canal Place, New York City, New York.

153rd Street and Cromwell Avenue, New York City, New York.

St. Peter's Avenue, New York City, New York.

1555 Purdy Street, New York City, New York.

St. Raymond's and Odell Avenues, New York City, New York.

111th Street and First Avenue, New York City, New York.

Brooklyn Edison Company, Inc.

358-368 Pearl Street, Brooklyn, New York.

21-23 Hudson Avenue, Brooklyn, New York.

2681-2715 Arthur Kill Road, Rossville, Staten Island, New York.

2116 Rockwell Place, Brooklyn, New York.

55-63 Johnson Street, Brooklyn, New York.

903-931 East Seventh Street (Parkville), Brooklyn, New York.

110-128 Varick Avenue, Brooklyn, New York.

Dikeman Street and Buttermilk Channel, Red Hook,
Brooklyn, New York.

321-359 Third Avenue, Brooklyn, New York.

7-13 Quincy Street, Brooklyn, New York.

26-30 Lexington Avenue, Brooklyn, New York.

*New York and Queens Electric Light and Power Com-
pany*

41-33 28th Street, Long Island City, New York.

81-16 45th Avenue, Elmhurst, Long Island, New York.

80-12—80-40 47th Avenue, Elmhurst, Long Island, New
York.

40-22 Lawrence Street, Flushing, Long Island, New
York.

Westchester Lighting Company

226 Washington Street, Mt. Vernon, New York.

South Third Avenue and East 7th Street, Mt. Vernon,
New York.

Railroad Avenue, Rye, New York.

7-15 Water Street, White Plains, New York.

East Main Street and Hamilton Avenue, Peekskill,
New York.

Tompkins Avenue and Vermilyea Street, Pleasantville,
New York.

Union Avenue and East First Street, Mt. Vernon, New
York.

240-254 Washington Street, Mt. Vernon, New York.

Andrews Lane and Elm Street, North Tarrytown, New
York.

Sherman Avenue, Ossining, New York.

1612-1616 East Main Street, Peekskill, New York.

45 Maple Avenue, Mt. Kisco, New York.

Cedar Street, New Rochelle, New York.

320 Washington Street, Mt. Vernon, New York.

38-40 Wheeler Avenue, Pleasantville, New York.

4006

Board's Exhibit No. 2

110 East First Street, Mt. Vernon, New York.
 Woodworth Avenue, Yonkers, New York.
 Echo Avenue, New Rochelle, New York.
 Sawmill River Road, Elmsford, New York.
 Kisco Avenue, Mt. Kisco, New York.
 Woodside Avenue, Briarcliff Manor, New York.
 54 Ash Street, Yonkers, New York.
 Kensico Avenue, White Plains, New York.

The Yonkers Electric Light and Power Company

4007

10-18 St. Casimir Avenue, Yonkers, New York.
 7-9 Central Avenue, Yonkers, New York.

New York Steam Corporation

4008

224-230 Pearl Street, New York City, New York.
 232-234 Pearl Street, New York City, New York.
 612-622 First Avenue, New York City, New York.
 412-418 East 36th Street, New York City, New York.
 410-416 East 33rd Street, New York City, New York.
 43 Sutton Place, New York City, New York.
 14th Street and East River, New York City, New York.
 27 Cliff Street, New York City, New York.
 39th Street, adjacent to Waterside No. 2, New York City, New York.
 26 West 13th Street, New York City, New York.
 North side of 59th Street, East of Avenue A, New York City, New York.
 South side of pier at foot of East 36th Street, New York City, New York.
 North side of pier and adjacent bulkhead at foot of Peck Slip, New York City, New York.

Consolidated Telegraph and Electrical Subway Company

535-551 West 41st Street, New York City, New York.
 140th Street and Exterior Street, New York City, New York.
 491 Walton Avenue, New York City, New York.

Board's Exhibit No. 2

Gas manufacturing plants

12. The names and locations of the gas manufacturing plants of the Consolidated Edison Company of New York, Inc., and their approximate manufacturing capacities as of December 31, 1936, were as follows:

Name and location of plant	Approximate capacity in cubic feet of gas per day	Manufactured in 1936—Thousands of cubic feet of gas
Hunts Point—Foot of Hunts Point Avenue, The Bronx		
Water gas	30,000,000	10,494,227
Coal gas	30,000,000	11,482,346
Total	60,000,000	21,976,573
Astoria Works—20th Avenue and 21st Street, Long Island City		
Water gas	71,500,000	15,625,535
Coal gas	10,000,000	298,597
Total	81,500,000	15,924,132
O'Connell Plant—First Avenue and 21st Street, Manhattan		
Water gas	38,000,000	1,394,420
Javenswood Plant—7-18—37th Avenue, Long Island City		
Water gas	36,000,000	.....
Flushing—Myrtle Avenue and Farington Street, Flushing		
Water gas	6,000,000	.....
Total	221,500,000	39,295,125

The names and locations of the gas manufacturing plants of the Westchester Lighting Company and their approximate capacities as stand-by plants, as of December 31, 1936, were as follows:

Name and location of plant	Approximate capacity in cubic feet of gas per day
Pelham Plant—Boston Post Road and Eastchester Creek, Pelham Manor, New York	15,000
Ossining Plant—Water Street, Ossining, New York	1,210
Total	<u>16,210</u>

4012

*Board's Exhibit No. 2***Gas holder
stations**

Gas holder-stations of the Consolidated Edison Company and the Westchester Lighting Company are operated at the following locations:

Consolidated Edison Company of New York, Inc.

4013

735 East 12th Street, New York City, New York.
 721 East 15th Street, New York City, New York.
 621 West 45th Street, New York City, New York.
 221 West 65th Street, New York City, New York.
 330 East 111th Street, New York City, New York.
 626 West 132nd Street, New York City, New York.
 204 Walnut Avenue, New York City, New York.
 231 Landing Road, New York City, New York.
 501 East 62nd Street, New York City, New York.
 2369 Blackrock Avenue, New York City, New York.
 244th Street and 86th Road, Bellrose, Long Island,
 New York.

Westchester Lighting Company

4014

Saw Mill River Road, Yonkers, New York.
 Railroad Avenue, Rye, New York.
 Tarrytown Road, Greenburgh, New York.
 Josephine Street, Tarrytown, New York.
 Pemart Avenue, Peekskill, New York.
 Hubbel's Cross Road, Mt. Kisco, New York.

Steam generating plants

13. The steam generating plants of the respondent New York Steam Corporation, with their locations and approximate capacities, as of December 31, 1936, were and are as follows:

Name and location of plant	Approximate capacity in thousands of pounds of steam per hour	Steam generated in 1936—thousands of pounds
Burling Slip Plant—126 John Street, New York City, New York	1,800	3,400,438
Kips Bay Plant—417 East 35th Street, New York City, New York	2,450	9,438,547
60th Street Plant—507 East 59th Street, New York City, New York	400	744,087
59th Street Plant—508 East 59th Street, New York City, New York	195	171,830
Total	<u>4,845</u>	<u>13,754,902</u>

4016

Location of other properties and operations

14. All transmission and distribution facilities and equipment and all other property owned by the respondents and used in their business are located and used by the respondents within the City of New York or the County of Westchester. All meters in use by any of the respondents are located, and are read, on the premises of consumers, situated within the City of New York or the County of Westchester; and the preparation and sending of bills to consumers takes place within the City of New York or the County of Westchester. All metering apparatus and equipment furnished by the respondents are located on premises of customers within the City of New York or the County of Westchester. None of the respondents undertakes, or has any contract or agreement, to supply, deliver or transmit electric energy at any location outside of the State of New York, or to supply or deliver electric energy for resale by customers outside of the State of New York.

4017

4018

Board's Exhibit No. 2

II. EMPLOYEES OF THE RESPONDENTS

15. As of April 17, 1937, the number of employees of the respondent Consolidated Edison Company of New York, Inc., and its affiliated operating Companies, was, by Companies:

	Number of Employees		
	Weekly	Monthly	Total
Consolidated Edison Company of New York, Inc.	22,227	1,328	23,555
Brooklyn Edison Company, Inc.	7,855	431	8,286
4019 New York and Queens Electric Light and Power Company	4,092	203	4,295
Westchester Lighting Company	2,701	128	2,829
The Yonkers Electric Light and Power Company	384	34	418
New York Steam Corporation	999	71	1,070
Consolidated Telegraph and Electrical Subway Company	1,618	30	1,648
Total employees	39,876	2,225	42,101

By principal classifications or types of work, the number of employees of the respondent Consolidated Edison Company of New York, Inc., and its affiliated operating Companies, was:

4020 Classification	Number of Employees		
	Weekly	Monthly	Total
Outside field employees	11,020	263	11,283
Electric generating stations, sub-stations and gas plant employees (exclusive of clerical and office employees at stations)	7,470	445	7,915
Clerical and office employees including meter readers and collectors	21,386	1,517	22,903
Total employees	39,876	2,225	42,101

The employees above indicated as at stations of the respondents may be further indicated as follows (exclusive of station construction and shop employees):

	Number of Employees		
	Weekly	Monthly	Total
Electric stations	3,700	268	3,968
Gas plants and holder stations	1,897	60	1,957
Steam stations	408	15	423
Total	6,005	343	6,348

Board's Exhibit No. 2

4021

The clerical and office employees of the respondents (exclusive of building service employees) may be further indicated in the following groups:

	Number of Employees		
	Weekly	Monthly	Total
Meter readers	895	2	897
Collectors	1,132	..	1,132
Commercial relations department employees (excluding meter readers and collectors)	5,884	176	6,060
Sales department employees	1,985	216	2,201
Controller's and auditing department employees	1,261	155	1,416
Other clerical and office employees	8,431	950	9,381
Total	19,588	1,499	21,087

4022

Employees of
Consolidated Edison Company

For only the Consolidated Edison Company of New York, Inc., the number of employees, by principal classifications or types of work, was:

Classification	Number of Employees		
	Weekly	Monthly	Total
Outside field employees	4,808	136	4,944
Electric generating stations, substations and gas plant employees (exclusive of clerical and office employees at stations)	5,389	306	5,695
Clerical and office employees including meter readers and collectors	12,030	886	12,916
Total employees	22,227	1,328	23,555

4023

The employees above indicated as at stations of the Consolidated Edison Company may be further indicated as follows (exclusive of station construction and shop employees):

	Number of Employees		
	Weekly	Monthly	Total
Electric stations	2,567	176	2,743
Gas plants and holder stations	1,768	55	1,823
Total	4,335	231	4,566

4024

Board's Exhibit No. 2

The clerical and office employees, etc., of the Consolidated Edison Company (exclusive of building service employees) may be further indicated in the following groups:

	Number of Employees		
	Weekly	Monthly	Total
Meter readers	513	....	513
Collectors	653	....	653
Commercial relations department employees, excluding meter readers and collectors	3,284	88	3,372
Sales department employees	1,058	117	1,175
Controller's and auditing department employees	573	103	676
Other clerical and office employees	4,843	570	5,413
Total	10,924	878	11,802

4025

Annual payrolls of respondents

16. The total annual payrolls of the Companies of the Consolidated Edison Company group of Companies in New York City and Westchester County, for 1935 and 1936, including retirement annuities and separation allowances paid, were as follows:

4026

Company	Year 1935	Year 1936
Consolidated Edison Company of New York, Inc.	\$13,696,645.73	\$15,759,234.25
The Astoria Light, Heat and Power Company	1,812,556.89	641,555.58
New Amsterdam Gas Company (Including The East River Gas Company of Long Island City)	547,538.51	497,576.23
Central Union Gas Company	371,666.68	380,267.33
Northern Union Gas Company	873,616.01	880,660.61
The Standard Gas Light Company of the City of New York	35,421.72	9,702.78
New York and Queens Gas Company	360,096.76	136,677.23
The New York Edison Company, Inc.	28,244,977.47	28,013,579.89
Brooklyn Edison Company, Inc.	16,207,835.40	16,375,685.03
New York and Queens Electric Light and Power Company	7,906,398.81	7,939,416.87
The Yonkers Electric Light and Power Company	829,745.43	789,909.38
Consolidated Telegraph and Electrical Subway Company	2,650,055.35	2,274,733.50
The Brush Electric Illuminating Company	1,156.24	1,187.93
Bronx Gas and Electric Company	820,630.54	878,444.67
Westchester Lighting Company	5,011,803.03	5,221,244.01
New York Steam Corporation	2,093,928.09	2,092,115.11
Total	\$81,464,072.66	\$81,891,990.40

* Five months ended May 31, 1936; merged into the Consolidated Edison Company of New York, Inc., on June 1, 1936.

* Eleven months and 22 days ended December 22, 1936; merged into the Consolidated Edison Company of New York, Inc., on December 23, 1936.

III. SCOPE OF BUSINESS AND OPERATIONS

Electric consumers

17. The consumers of the *electric* service supplied by the respondent Companies, as of December, 1936, number about 2,324,800, of whom about 2,160,300 are located in New York City and 164,500 are located in Westchester County. Wherever in this stipulation, figures are given as to the number of consumers of the service of any of the respondents, such number of consumers is based upon the number of bills rendered for such service in the month of December, 1936. By classifications the electric consumers of the respondents in New York City are:

Type of service	Number of consumers	Per cent of consumers
Residential	1,763,318	81.63
General uses, including commercial	366,549	16.97
Religious purposes	3,985	0.18
Wholesale and other uses	23,328	1.08
Flat rate—general consumers.	2,821	0.13
Railroads	16	....
Municipal street lighting	6	....
Miscellaneous governmental uses	268	0.01
Total	<u>2,160,291</u>	<u>100.00</u>

4028

4029

The railroads included in the above table are the New York Central Railroad Company, the New York, New Haven and Hartford Railroad Company, the Hudson and Manhattan Railroad Company (the facts as to electric energy supplied to these three railroads being stated in Paragraph 67M hereof), the Long Island Railroad Company (operating on Long Island and into New York City), and three street surface railways operating within the City of New York.

For "miscellaneous governmental uses," 175 bills were rendered (December, 1936) to the Federal Government, 18 bills to the State of New York, and 75 bills to the City of New York and other agencies of local government.

4030

Board's Exhibit No. 2

Electric consumers in
Westchester County

By classifications, the *electric* consumers of the respondents in Westchester County, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
Residential	133,516	81.14
General uses, including commercial	23,173	14.08
Religious purposes	815	0.50
Wholesale and other uses	6,382	3.88
4031 Flat rate—general consumers	53	0.03
Railroads	6	....
Municipal street lighting	160	0.10
Miscellaneous governmental uses	440	0.27
Total	<u>164,545</u>	<u>100.00</u>

The only railroad included in the above table is a street surface railroad operating within Westchester County. For the "miscellaneous governmental uses," 2 bills were rendered (December, 1936) to the Federal Government, 14 bills to the State of New York, 58 bills to the Westchester County Government, and 366 bills to municipalities and other agencies of local government.

4032

Gas
consumers

18. By classifications, the *gas* consumers of the respondent Consolidated Edison Company of New York, Inc., in New York City, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	1,025,495	99.16
Wholesale service	5,579	0.54
Heating service and other service	3,121	0.30
Prepayment meter sales	30	....
Total	<u>1,034,225</u>	<u>100.00</u>

Board's Exhibit No. 2

4033

By classifications, the *gas* consumers of the respondent Westchester Lighting Company (in Westchester County), as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	128,575	97.79
Wholesale service	149	0.11
Heating service and other service	2,764	2.10
Prepayment meter sales	2	....
Total	131,490	100.00

Sources of
operating revenues

4034

19. The operating revenues of the Consolidated Edison Company group of Companies, taken as a whole, have been and are derived principally from sales of gas, electricity and steam, as indicated by the following consolidated statement, which shows the revenues from these classes of service for the years 1935 and 1936:

Operating Revenues	Year 1935	Year 1936
From sales of electricity	\$176,549,590.29	\$180,448,596.19
From sales of gas	42,115,466.14	41,163,261.69
From sales of steam	10,589,765.58	10,761,341.04
From rentals of real property, street lighting equipment, and appliances, and other miscellaneous sources	2,898,055.80	2,451,992.45
Total operating revenues	\$232,152,877.81	\$234,825,191.37

4035

Board's Exhibit No. 2

Uses of electric
energy sold

20. The following table indicates the sales of electricity by the Consolidated Edison Company of New York, Inc. (including its affiliated Companies merged into it), the revenues derived therefrom, by classes of consumers, and the number of active meters on consumers' premises within the City of New York at the end of each year, for the years 1935 and 1936, inclusive:

	Year 1935	Per cent of kw. hrs. or revenues	Year 1936	Per cent of kw. hrs. or revenues
Sales of electric energy in kilowatt hours:				
Residential	320,998,665	11.69	368,970,560	12.13
General uses, including commercial	540,091,106	19.67	791,200,010	26.00
Religious purposes	7,493,524	0.27	19,982,751	0.66
Wholesale and other uses	1,363,363,531	49.66	1,178,630,928	38.74
Railroads	208,758,643	7.60	322,665,076	10.61
Municipal street lighting	57,777,328	2.11	58,464,126	1.92
Miscellaneous governmental uses ¹	247,192,520	9.00	302,563,388	9.94
Total sales of electric energy in kilowatt hours	2,745,675,317	100.00	3,042,476,839	100.00
Active electric meters on consumers' premises—all located within the City of New York—at the end of the year (approximate)				
	985,400		997,000	
Revenues from sales of electric energy:				
Residential	\$20,364,362.10	20.86	\$21,614,961.59	21.71
General uses, including commercial	29,473,489.57	30.19	36,378,896.99	36.53
Religious purposes	315,937.09	0.32	512,972.63	0.52
Wholesale and other uses	40,967,948.18	41.96	33,943,998.30	34.09
Flat rate—general consumers	35,078.83	0.04	34,740.32	0.03
Railroads	1,887,496.40	1.94	2,519,509.16	2.53
Municipal street lighting	1,672,006.23	1.71	1,165,855.04	1.17
Miscellaneous governmental uses ²	2,910,417.18	2.98	3,408,377.96	3.42
Total	\$97,626,735.58	100.00	\$99,579,311.99	100.00
Less—Electric sales suspense	521,281.68		436,445.46	
Total revenue from sales of electric energy	\$97,105,453.90		\$99,142,866.53	

NOTE: Overlapping items other than Electric Sales Suspense credited to Surplus in 1936 have not been given effect to in this statement.

¹ Includes electric energy supplied to municipal subway system

1935—164,402,705 kw. hrs.

1936—203,833,822 kw. hrs.

² Includes revenue from electric energy supplied to municipal subway system

1935—\$1,377,412.32

1936—1,667,851.16

Board's Exhibit No. 2

4039

Electric energy sold
by System

21. The following table shows the corresponding facts for the *electric* operations of the Consolidated Edison Company group of Companies, as a System, in New York City and Westchester County:

	Year 1935	Per cent of kw. hrs. or revenues	Year 1936	Per cent of kw. hrs. or revenues
Sales of electric energy in kilowatt hours:				
Residential	887,529,287	19.12	991,244,166	19.32
General uses, including commercial	890,884,917	19.20	1,182,668,912	23.05
Religious purposes	14,723,415	0.32	31,067,366	0.61
Wholesale and other uses	2,081,309,900	44.85	1,927,188,312	37.56
Railroads	249,464,303	5.37	376,800,766	7.34
Municipal street lighting	138,935,104	2.99	142,812,069	2.78
Other electrical corporations	14,090	....	5,510	....
Miscellaneous governmental uses ¹	378,097,474	8.15	479,189,359	9.34
Total sales of electric energy in kilowatt hours	4,640,958,490	100.00	5,130,976,460	100.00
Active electric meters on consumers' premises—all within the City of New York and Westchester County—at the end of the year (approximate)	2,298,700		2,332,700	
Revenue from sales of electric energy:				
Residential	\$55,719,480.25	31.46	\$57,358,265.06	31.71
General uses, including commercial	50,593,558.17	28.56	58,294,849.80	32.23
Religious purposes	653,693.02	0.37	874,830.28	0.48
Wholesale and other uses	58,759,951.75	33.17	51,727,965.90	28.60
Flat rate—general consumers	77,358.97	0.04	73,580.02	0.04
Railroads	2,369,759.82	1.34	3,112,902.92	1.72
Municipal street lighting	4,039,526.43	2.28	3,563,609.63	1.97
Other electrical corporations	986.30	....	385.70	....
Miscellaneous governmental uses ²	4,930,287.66	2.78	5,878,652.34	3.25
Total	\$177,144,602.37	100.00	\$180,885,041.65	100.00
Less—Electric sales suspense	453,014.33		436,445.46	
Total revenues from sales of electric energy	\$176,691,588.04		\$180,448,596.19	

4040

4041

¹ Includes electric energy supplied to municipal subway system

1935—221,283,676 kw. hrs.

1936—290,614,173 kw. hrs.

² Includes revenue from electric energy supplied to municipal subway system

1935—\$1,838,722.86

1936—2,353,592.65

Board's Exhibit No. 2

Uses of
gas sold

22. The following table shows the sales of *gas* by the Consolidated Edison Company of New York, Inc. (including its affiliated Companies merged into it), the revenues received therefrom, by classes of consumers, and the number of active meters on consumers' premises, all within the City of New York, at the end of each year, for the years 1935 and 1936:

Classes of consumers	Year 1935	Per cent of Mcf. or revenues	Year 1936	Per cent of Mcf. or revenues
Sales of gas (thousands of cubic feet):				
General service	24,444,928.0	74.11	23,923,516.5	72.1
Wholesale service	7,324,945.2	22.21	7,539,937.2	22.1
Heating service and other service	1,211,981.6	3.67	1,543,749.5	4.6
Prepayment meter sales	3,298.7	0.01	498.6	...
Total sales of gas Mcf.	32,985,153.5	100.00	33,007,701.8	100.0
Active gas meters on consumers' premises —all within the City of New York—at the end of the year (approximate)	1,021,500		1,039,600	
Revenues from sales of gas:				
General service	\$28,522,098.09	79.51	\$27,508,913.50	78.1
Wholesale service	6,478,900.30	18.06	6,663,201.05	18.9
Heating service and other service	868,473.20	2.42	921,230.78	2.8
Prepayment meter sales	3,773.37	0.01	571.74	...
Total gas revenues	\$35,873,244.96	100.00	\$35,093,917.07	100.0
Deductions and allowances	541.01		114.19	
Net total gas revenues	\$35,872,703.95		\$35,093,802.88	

Gas sold
by System

23. The following table shows the corresponding facts for the gas operations of the group of Companies (i. e., for the Consolidated Edison Company and the Westchester Lighting Company combined), for the years 1935 and 1936:

Classes of consumers	Year 1935	Per cent of Mcf. or revenues	Year 1936	Per cent of Mcf. or revenues	
Classes of gas (thousands of cubic feet):					4046
General service, principally residential	28,002,912.4	74.34	27,602,667.7	72.61	
Wholesale service	7,657,541.7	20.33	7,749,311.2	20.38	
Heating service and other service	2,002,678.9	5.32	2,663,582.1	7.01	
Prepayment meter sales	3,398.1	0.01	573.3	....
Total sales of gas Mcf.	37,666,531.1	100.00	38,016,134.3	100.00	
Gas meters on consumers' premises— all within the City of New York or in West- chester County—at the end of the year (ap- proximate)	1,150,300		1,171,400		
Revenues from sales of gas:					
General service, principally residential	\$33,875,837.00	80.44	\$32,702,747.27	79.45	
Wholesale service	6,798,133.90	16.14	6,844,086.94	16.63	
Heating service and other service	1,438,124.35	3.41	1,615,871.65	3.92	
Prepayment meter sales	3,911.90	0.01	670.02	....
Total gas revenues	\$42,116,007.15	100.00	\$41,163,375.88	100.00	4047
Deductions and allowances	541.01		114.19		
Net total gas revenues	\$42,115,466.14		\$41,163,261.69		

Per cent of
service supplied

24. The Consolidated Edison Company of New York, Inc., supplied in 1936 about 55.3 per cent of the total gas supplied to the public in New York City. All of the Boroughs of Brooklyn and Richmond, and the larger part of the Borough of Queens, are supplied with gas by companies not identified with the Consolidated Edison Company group of Companies.

4048

Board's Exhibit No. 2

25. All of the Borough of Richmond and the Fifth Ward of the Borough of Queens are supplied with electricity by companies not identified with the Consolidated Edison Company of New York group. The Companies of the Consolidated Edison Company of New York group supplied in 1936 about 97.5 per cent of the total electric energy sold by central-station companies in New York City. Throughout the territory of the respondent Companies, there are privately-owned electric generating plants, which generate electric energy for the owner's use or for sale to tenants, etc.; and various concerns maintain emergency generating plants, for operation only in the event of any failure of central-station supply.

4049

26. In Westchester County, the Westchester Lighting Company is the only public utility supplying gas in its territory; and the Westchester Lighting Company and The Yonkers Electric Light and Power Company supply nearly all of the electricity sold by central-station companies. There is a relatively small part of the County which is supplied with electricity by a company not identified with the Consolidated Edison Company of New York group.

4050

**Steam operations
in Manhattan**

27. The New York Steam Corporation is the only central-station steam utility operating in the City of New York. It supplies steam in a part of the Borough of Manhattan, as shown on the accompanying map. There is a large number of privately owned and operating steam plants within the Borough of Manhattan as well as in other parts of the City of New York and Westchester County.

28. The New York Steam Corporation derives substantially its entire revenues from the sale of steam,

within the part of the Borough of Manhattan which it serves, in New York City. Steam is supplied for heating and processing, in commercial, industrial and residential uses, in loft and office buildings, some industrial establishments, multiple-family dwellings, and for the operation of steam compressors, including those for elevator operation in the passenger station of the Pennsylvania Railroad Company. The following table shows the volume of sales of steam and the revenues derived therefrom, and the number of active meters on consumers' premises, at the end of each year, for the years 1935 and 1936: 4052

Year	Sales of steam (M. lbs.)	Revenue	Active meters on consumers' prem- ises in New York City at the end of year
1935	11,247,118	\$10,589,765.58	3,066
1936	11,443,465	10,761,341.04	3,050

IV. MANAGEMENT AND MANNER OF CARRYING ON OPERATIONS

29. The respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, and the New York Steam Corporation, are commonly referred to as the Consolidated Edison Company group of Companies or the Consolidated Edison Company System. The respondents (other than the Consolidated Telegraph and Electrical Subway Company) constitute, and are operated as, a unitary and integrated system for the supplying of electric, gas and steam service to consumers within the parts of the City of New York and the County of Westchester, State of New York, indicated in Paragraph 1 of this stipulation. The nature, manner and extent of such 4053

4054

Board's Exhibit No. 2

integrated operation are more fully set out in subsequent paragraphs of this stipulation.

Stock ownership

4055

30. The respondent Consolidated Edison Company of New York, Inc., owns approximately 99.6 per cent of the common stock (voting) of the respondent Brooklyn Edison Company, Inc. The respondent Consolidated Edison Company of New York, Inc., owns approximately 98.4 per cent of the common stock (voting) and approximately 92.7 per cent of the preferred stock (voting) of the respondent New York and Queens Electric Light and Power Company. The respondent Consolidated Edison Company of New York, Inc., owns all of the outstanding common stock (voting) of the respondents Westchester Lighting Company and The Yonkers Electric Light and Power Company. The respondent Consolidated Edison Company of New York, Inc., owns approximately 96.3 per cent of the outstanding common stock (voting) of the respondent New York Steam Corporation. The respondent Consolidated Edison Company of New York, Inc., owns all of the outstanding common stock and all of the preferred stock (voting) of the respondent Consolidated Telegraph and Electrical Subway Company.

4056

System management

31. A majority of the Board of Directors of each of the respondent Companies other than the Consolidated Edison Company of New York, Inc., is made up of Trustees or officers of the respondent Consolidated Edison Company of New York, Inc. Each of the respondent Companies has executive and operating officers and employees who are not officers of the respondent Consolidated Edison Company of New York, Inc., but who take part, with the Trustees and officers of the latter, in the discussion and

determination of the major and general policies of the group of Companies. The major labor policies, among others, of the group of Companies are thus discussed and determined, but are locally administered and applied by and through the Board of Directors and executive officers of each Company, in a manner not inconsistent with the general policies as determined by and for the group of Companies.

**Unified operations
of System**

4058

32. The Companies of the Consolidated Edison Company of New York group, including those merged in 1936 into that Company, have for many years past been under a unified ownership, management and operation, subject to the regulation and supervision of the Public Service Commission of the State of New York under State laws providing for the performance of various public obligations. Thus the gas operations of the group of Companies have for many years been carried on in accordance with the terms of joint facility arrangements; and the manufacturing plants, holder-stations, pumping stations and transfer mains of the various Companies have been and are operated as an interconnected system. At the present time, the respondent Consolidated Edison Company conducts the gas business of respondents in New York City, and the Westchester Lighting Company conducts a gas business in Westchester County. In similar manner the generating facilities of the electric Companies of the group have been operated as a unit for the System electric load; and electric energy has been supplied by or to the Companies of the System in accordance with interchange of power arrangements, more fully set out in subsequent paragraphs of this stipulation.

4059

4060

Board's Exhibit No. 2

4061

4062

33. The power and steam generating plants now operated by the respondents have been established from time to time, in different parts of the territory served, according to the demands for service; and the generating facilities are accordingly diversified as to location and time of first installation. The several electric generating plants of the respondent Consolidated Edison Company are operated as an integrated system, together with the plants of Brooklyn Edison Company, Inc., and The Yonkers Electric Light and Power Company, in the interests of efficiency and economy in operation; and the Sherman Creek, 66th Street, Gold Street, and Port Morris stations are used principally for peak loads and stand-by service. The East River, Hell Gate and Hudson Avenue stations contained, as of December 31, 1936, 69 per cent of total installed (rated) capacity of the System, and in 1936 generated 89 per cent of the total electrical output of the group of Companies. The respondent New York Steam Corporation has a connection with the East River and Waterside electric generating stations of the Consolidated Edison Company of New York, Inc., from which there is made available to it an additional supply of steam for resale to its customers.

34. As a result of such a unified operation of the Companies of the Consolidated Edison Company of New York group, the merger in 1936 of the various affiliated Companies into that Company did not effect material changes in the business and operations of the group as a whole. The business of the Companies merged is being carried on in substantially the same manner as such business was theretofore carried on by such Companies. Further simplification of corporate structures within the group would likewise have no material effect upon the character of the operations and business now carried on by the group of Companies as a whole.

**Manner of supplying
electric requirements**

35. The electric energy required by this group of Companies is supplied in principal part from the generating stations of the Consolidated Edison Company of New York, Inc., located in the Boroughs of Manhattan and The Bronx, in considerable part from the generating stations of Brooklyn Edison Company, Inc., located in the Borough of Brooklyn, City of New York, and in lesser part by purchase of electricity under an interchange of power arrangement with New York Power and Light Corporation as more fully stated in subsequent paragraphs of this stipulation, and in minor part from the generating station of The Yonkers Electric Light and Power Company. The power obtained by the Consolidated Edison Company of New York, Inc., from New York Power and Light Corporation, is, in part, delivered directly to the transmission and distribution lines of Westchester Lighting Company.

4064

36. The electric generating facilities of the group of Companies are operated as a unit for the System electric load, through the medium of a System operator or load dispatcher, to secure the greatest over-all economy of production consistent with the highest degree of continuity. The total generating facilities of the group of Companies have a generating capacity of approximately 2,400,000 kilowatts. By reason of the 132,000 volt tie-line connection of 150,000 kilowatt capacity with New York Power and Light Corporation, additional electric energy is to that extent made available for the System. The instantaneous maximum System demand so far realized was registered on December 2, 1936, and amounted to 1,472,000 kilowatts. The interchange of power arrangements have been established as an additional source of supply in the interests of assuring continuity of service to the public and as a means of providing for the electric requirements of the respondent electric Companies on an economical basis.

4065

Board's Exhibit No. 2

Electric energy generated,
purchased and sold

37. The following table shows, by Companies, the indicated facts as to the electric energy generated, and purchased and sold, by the Consolidated Edison Company group of Companies, during the years 1935 and 1936:

		Kilowatt Hours	
		1935	1936
Electric Energy Generated:			
Consolidated Edison Company of New York, Inc.	.....		88,632,250†
4067 The New York Edison Company, Inc.		2,615,130,725*	3,284,707,152*
Brooklyn Edison Company, Inc.		1,972,421,489	2,263,041,040**
The Yonkers Electric Light and Power Company	.....		10,440,390
Total generated		<u>4,587,552,214</u>	<u>5,646,820,832</u>
Electric Energy Purchased:			
From New York Power and Light Corporation		905,891,000	392,160,000
From other sources within the State of New York		8,277	8,960
Total Purchased		<u>905,899,277</u>	<u>392,168,960</u>
Total Electric Energy Generated and Purchased		<u>5,493,451,491</u>	<u>6,038,989,792</u>
Electric Energy Sold:			
4068 Consolidated Edison Company of New York, Inc.	.....		86,238,782†
The New York Edison Company, Inc.		2,687,301,525*	2,894,781,346*
Brooklyn Edison Company, Inc.		1,149,657,962	1,243,122,927
New York and Queens Electric Light and Power Company		493,462,221	543,719,150
Westchester Lighting Company		205,239,808	241,609,657
Bronx Gas and Electric Company		58,373,792	61,456,711†
The Yonkers Electric Light and Power Company		46,923,182	60,047,887
Total Sold		<u>4,640,958,490</u>	<u>5,130,976,460</u>
Electric energy supplied without direct charge		612,909	1,394,542
Electric energy used by the Companies		<u>36,157,888</u>	<u>37,077,573</u>
Total accounted for		<u>4,677,729,287</u>	<u>5,169,448,575</u>
Electric energy unaccounted for		<u>815,722,204</u>	<u>869,541,217</u>

* The figures shown for the period prior to August 1, 1935, are the combined amounts for The New York Edison Company and The United Electric Light and Power Company, which Companies were consolidated on that date to form The New York Edison Company, Inc. The figure shown for 1936 represents the energy sold, etc., by The New York Edison Company, Inc., for the period prior to its merger into the Consolidated Edison Company of New York, Inc., on December 22, 1936.

** The difference between this amount and the kilowatt hours generated at Hudson Avenue station represents station use at the Gold Street and 66th Street Stations of the Brooklyn Edison Company, Inc.

**Short circuit at
Hell Gate station**

38. On January 15, 1936, at about 4:16 P. M., a major interruption in 60-cycle service in the Borough of Manhattan north of 59th Street and in part of the Borough of The Bronx, was produced by a short circuit in the Hell Gate generating station at 134th Street and the East River. Direct current service to the customers supplied with direct current in the same Manhattan area was not affected. No similar interruption of alternating current service has occurred before or since.

4070

39. Service to some 40,000 customers, out of about 2,000,000 electric customers of the group of Companies, involving about ten per cent of the load, was affected. Other generating plants of the System in New York City almost immediately took over the load from such units at the Hell Gate plant as were affected by the short-circuit; and the tie-lines from the lines of the New York Power and Light Corporation, which tie-line had at first been put out of commission by the impact of the short-circuit on the switch in the Hell Gate station, was soon restored to availability as a source of supply, through other stations. Owing to the diversified locations of generating station capacity and reserves there was at no time a shortage of power supply; but the restoration of service required considerable work in the streets, on transformers, etc., and on consumers' premises (fuses, motors, etc.), to repair the effects of the impact on the local distribution lines in the limited area affected, as well as work in the electrical galleries at Hell Gate. Several telephone exchanges and branch post offices, and various industrial and commercial concerns, in the area affected, experienced a partial or total interruption of electric service. In The Bronx and a part of the Manhattan distribution area affected, service was restored within an hour. In the distribution areas below 129th Street, restoration of service was accomplished

4071

4072

Board's Exhibit No. 2

from time to time during the evening and night, and was completed the following morning.

4073

40. An investigation and proceeding were conducted by the Public Service Commission of the State of New York (Case No. 8727) with respect to this interruption of service and the engineering improvements being made by the Company in the light of the resultant experience. Since the short-circuit of January 15, 1936, work then in progress has been completed by the Companies, along lines designed to localize further the effects of such a short-circuit upon local distribution lines and service; should such a short-circuit ever occur again in a major station.

**Manner of supplying
gas requirements**

4074

41. The only Companies of the Consolidated Edison Company group which supply gas service are the Consolidated Edison Company of New York, Inc., which supplies the Boroughs of Manhattan and The Bronx, Long Island City and the Third Ward (Flushing) of the Borough of Queens, and the Westchester Lighting Company, which supplies such parts of Westchester County (hereinbefore shown) as are supplied with gas. Their respective manufacturing plants, holder stations, pumping stations, transfer and distribution lines, and other properties, are operated as an interconnected system under arrangements for the joint use of such facilities. The gas supplied is manufactured at the plants of the Consolidated Edison Company of New York, Inc., in the Boroughs of Manhattan, The Bronx, and Queens. The Westchester Lighting Company maintains stand-by and emergency gas plants in Pelham Manor, New York, and Ossining, New York; but these plants do not ordinarily manufacture gas. The gas mains and system of the Consolidated Edison Company group are not interconnected with the gas mains of any other gas company or group of gas companies.

**Gas produced
and distributed**

42. The following table shows the gas produced, the gas send-out, and the gas distributed, by the Companies of the Consolidated Edison Company group, during the years 1935 and 1936:

	Year 1935	Year 1936
Gas Produced (thousands of cubic feet)		
By the Consolidated Edison Company of New York, Inc.	21,218,425.0	31,486,959.0
By The Astoria Light, Heat and Power Company	16,897,869.0	7,808,166.0†
By New Amsterdam Gas Company	632,745.0	.....
Total gas produced (Mcf)	38,749,039.0	39,295,125.0
Total gas send-out* (Mcf)	38,749,055.0	39,286,022.0
Gas Distributed (thousands of cubic feet)		
By the Consolidated Edison Company of New York, Inc.	17,970,012.8	19,664,501.2
By New Amsterdam Gas Company incl. The East River Gas Company of Long Island City	3,360,158.2	3,267,565.3‡
By Central Union Gas Company	3,174,691.7	3,075,332.9†
By Northern Union Gas Company	4,530,923.2	4,398,854.5†
By The Standard Gas Light Company of the City of New York	1,444,168.0	700,220.8†
By New York and Queens Gas Company	1,163,654.0	564,365.5†
By Bronx Gas and Electric Company	1,341,545.6	1,336,861.6‡
By Westchester Lighting Company	4,681,377.6	5,008,432.5
Total gas distributed (Mcf)	37,666,531.1	38,016,134.3
Total gas used by the Companies (Mcf)	290,819.2	297,572.6
Total gas accounted-for	37,957,350.3	38,313,706.9
Balance—gas lost and unaccounted-for	791,704.7	972,315.1

4076

4077

* Difference between gas produced and gas send-out is due to gas in storage holders.

† Five months ended May 31, 1936; merged into the Consolidated Edison Company on June 1, 1936.

‡ Eleven months and 23 days ended December 23, 1936; merged into Consolidated Edison Company on December 23, 1936.

4078

✓
*Board's Exhibit No. 2***V. ELECTRIC INTERCONNECTION WITH NEW YORK POWER AND LIGHT CORPORATION**

4079

43. The Consolidated Edison Company of New York, Inc., and its affiliated Companies have no interconnection with any other public utility company or system for the supplying or exchange of gas or steam. The Consolidated Edison Company of New York, Inc., and its affiliated Companies have no interconnection with any public utility company or system located outside of the State of New York, for the supplying or exchange of electric energy, and no interconnection for the supplying or exchange of electric energy with any company or system supplying electricity, gas or steam to the public, within or outside of the State of New York, except the interconnection with the New York Power and Light Corporation, which is an affiliated company of the Niagara Hudson Power Corporation. The New York Power and Light Corporation operates steam electric and hydro generating plants, and supplies electric service and gas service to consumers, all situated within the State of New York, in a large area in Eastern New York State, including territory north of Westchester County. The lines of the New York Power and Light Corporation are publicly stated to be interconnected with those of other companies of the same system, which are situated and operated within the State of New York.

4080

44. The interconnection with the New York Power and Light Corporation is of 150,000 kilowatt capacity, and consists of two 132,000 volt lines running underground from the Hell Gate station, at 134th Street and the East River in the Borough of The Bronx, City of New York, to the Dunwoodie substation of The Yonkers Electric Light and Power Company, near the City line between New York and Yonkers, and thence over-

head to interconnect with the New York Power and Light Corporation's feeders at the County boundary between Westchester and Putnam Counties. The Consolidated Edison Company and The Yonkers Electric Light and Power Company, in their respective territories, own the transmission lines between the Hell Gate station and the boundary between the City of Yonkers and the Town of Greenburgh, in the County of Westchester, from which point the overhead transmission lines to the Putnam County line are owned by the Westchester Lighting Company. The overhead portion of the transmission lines from the Dunwoodie substation to the Yonkers City line and thence to Millwood is constructed along the Catskill Aqueduct right-of-way of the City of New York, supplemented by various small parcels of land and easements necessary to provide an adequate right-of-way. Beyond Millwood, the necessary right-of-way to the Putnam County line was locally acquired by the Westchester Lighting Company.

4082

45. None of the respondent Companies owns, or transmits electric energy over any part of, the transmission line north of the County boundary between Westchester and Putnam Counties. The electric energy transmitted by the respondents to the lines of the New York Power and Light Corporation is supplied by the latter to its consumers within the State of New York and is not transmitted, by it or by any of its affiliated companies, across any State boundary. None of the respondents has any interconnection with any company operating outside of the State of New York.

4083

Board's Exhibit No. 2

Quantities of energy sold
through tie-line

46. The quantities of electric energy received from and delivered to the New York Power and Light Corporation, by the respondent Companies, through this interconnection, vary from year to year and from time to time during each year, according to operating conditions and the demands for service in the territories of the respective parties to the interconnection. From its establishment, the transactions have been, by years:

Year	Kw. hrs. received from New York Power and Light Corporation	Kw. hrs. delivered to New York Power and Light Corporation	Net kw. hrs. purchased from New York Power and Light Corporation	Per cent of energy re- quirements of Consolidated Edison Company
1932 (June 22 to Dec. 31)	24,358,950	.....	24,358,950	0.5
1933	510,698,281	7,000	510,691,281	102
1934	553,281,230	3,751,500	549,529,730	104
1935	905,924,000	33,000	905,891,000	165
1936	406,068,000	13,908,000	392,160,000	65
1937 (To April 30)	216,700,000	108,000	216,592,000	99

Board's Exhibit No. 2

4087

Sales through tie-line
by months

47. During 1935 and 1936, the quantities of electric energy interchanged and sold, by and between the Consolidated Edison Company of New York, Inc., or its predecessors in electric operations, and the New York Power and Light Corporation, were as follows, by months:

Month of 1935	Kilowatt hours delivered by Consolidated Edison Company to New York Power and Light Corporation	Kilowatt hours delivered by New York Power and Light Corporation to Consolidated Edison Company	Net kilowatt hours sold by New York Power and Light Corporation to Consolidated Edison Company
January	20,000	81,935,000	81,915,000
February	0	80,041,000	80,041,000
March	0	99,501,000	99,501,000
April	0	100,100,000	100,100,000
May	0	93,469,000	93,469,000
June	0	71,998,000	71,998,000
July	0	93,538,000	93,538,000
August	2,000	58,446,000	58,444,000
September	0	42,591,000	42,591,000
October	2,000	39,556,000	39,554,000
November	0	72,441,000	72,441,000
December	9,000	72,308,000	72,299,000

4088

Net sales during
year

905,891,000

4089

Month of 1936	Kilowatt hours delivered by Consolidated Edison Company to New York Power and Light Corporation	Kilowatt hours delivered by New York Power and Light Corporation to Consolidated Edison Company	Net kilowatt hours sold by New York Power and Light Corporation to Consolidated Edison Company
January	167,000	42,764,000	42,597,000
February	545,000	20,482,000	19,937,000
March	0	85,536,000	85,536,000
April	0	88,396,000	88,396,000
May	0	69,914,000	69,914,000
June	938,000	11,824,000	10,886,000
July	3,498,000	2,660,000	838,000
August	5,197,000	1,880,000	3,317,000
September	1,604,000	2,249,000	645,000
October	1,065,000	12,370,000	11,305,000
November	433,000	31,352,000	30,919,000
December	461,000	36,641,000	36,180,000

Net sales during
year

392,160,000

4090

Board's Exhibit No. 2

VI. PURCHASE OF MATERIALS AND DISPOSAL OF RESIDUAL BY-PRODUCTS

48. The respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York Steam Corporation, purchase coal, oil, and other materials, for use in the production of electricity, gas or steam. The purchases of coal, oil, copper and other major materials, by and for the requirements of any of the group of respondent Companies, are supervised by, and are negotiated with the assistance and advice of, a central purchasing department maintained by the respondent Consolidated Edison Company of New York, Inc. Contracts for the supplying of coal, oil, and like major materials, are executed by the particular Company, for its requirements. Delivery of the materials contracted for is made to the particular Company, upon its order or requisition to the seller; and payment therefor to the seller is made by the Company receiving the materials.

4091

Purchases
of coal

4092

49. The quantities of coal delivered to the Companies and the total amounts paid therefor, in 1935 and 1936, by Companies, for *electric* operations, were as follows:

	1935		1936	
	Net Tons of coal	Amount paid	Net Tons of coal	Amount paid
Consolidated Edison Company of New York, Inc., and its predecessor Com- panies	1,719,492	\$ 8,055,211	2,203,316	\$10,351,438
Brooklyn Edison Company, Inc.	968,440	4,714,376	1,108,692	5,341,010
Totals for coal purchased for <i>electric</i> operations	<u>2,687,932</u>	<u>\$12,769,587</u>	<u>3,312,008</u>	<u>\$15,692,448</u>

Board's Exhibit No. 2

4093

50. The quantities of coal delivered (only to the respondent Consolidated Edison Company), and the total amounts paid therefor, in 1935 and 1936, for *gas* operations, were as follows:

	1935		1936	
	Net Tons of coal	Amount paid	Net Tons of coal	Amount paid
Consolidated Edison Company of New York, Inc.	1,210,988	\$6,094,246	897,267	\$4,446,400
Totals for coal purchased for <i>gas</i> operations	<u>1,210,988</u>	<u>\$6,094,246</u>	<u>897,267</u>	<u>\$4,446,400</u>

4094

The quantities of coal delivered to the New York Steam Corporation, and the amounts paid therefor, in 1935 and 1936, for *steam* operations, were as follows:

	1935		1936	
	Net Tons of coal	Amount paid	Net Tons of coal	Amount paid
New York Steam Corporation	766,022	\$3,083,166	766,177	\$3,085,913

Total quantities
of coal delivered

51. The total quantities of coal delivered for gas, electric and steam production, for the years 1935 and 1936, were:

4095

	1935	1936
	Net tons of coal	Net tons of coal
Electric Operations	2,687,932	3,312,008
Gas Operations	1,210,988	897,267
Steam Operations	766,022	766,177
Totals	<u>4,664,942</u>	<u>4,975,452</u>

The total amounts paid by the respondents for coal for such uses were \$21,946,999 in 1935 and \$23,224,761 in 1936.

Board's Exhibit No. 2

Plants to which coal
was delivered

52. The coal purchased and received for *electric* operations, in 1935 and 1936, was delivered to the following plants:

Plant	Net	Net
	Tons of coal in 1935	Tons of coal in 1936
Hudson Avenue	953,150	1,103,916
Gold Street	.....	4,776
Rossville (Storage)	15,290	.....
4097 Waterside	228,801	325,754
East River	583,035	664,749
Astoria (Storage)	13,986	14,254
Sherman Creek	126,239	207,274
Hell Gate	764,330	938,193
Port Morris	.....	40,559

The coal purchased and received for *gas* operations, in 1935 and 1936, was delivered to the following plants:

Plant	Net	Net
	Tons of coal in 1935	Tons of coal in 1936
* Astoria	1,210,988	897,267
Hunts Point }		

* The coal purchased and received for gas operations was delivered to storage, and was transferred to each plant as required.

The coal purchased and received for *steam* generation was delivered to the plants of the New York Steam Corporation.

Origins of
coal purchased

53. Purchases of coal, oil, and other materials are made only from non-affiliated producers or dealers. None of the respondents owns or operates, or is interested in, directly or indirectly, any mine, well, refinery, processing establishment or factory, from which it purchases or receives materials used in the production of electricity, gas or steam (excepting by-products produced in the respondents' own gas plants and used in their own

plants as fuel). The coal purchased and delivered to the Consolidated Edison Company of New York, Inc., and its affiliated Companies was mined outside of the City and State of New York, and was brought to the various plants in New York City by rail and barge or by rail and steamship. Most of the coal purchased by the Companies of the Consolidated Edison Company group in 1935 and 1936 was bought under contract. About 35,000 tons were purchased as "spot" coal each year.

Deliveries of coal

4100

54. Of the total tonnage of coal purchased and delivered to the Companies in 1935 and 1936, the points of delivery to and receipt by the respondent Companies were as follows:

Point of delivery	Net Tons of coal in 1935	Net Tons of coal in 1936
F.o.b. mines in other States	2,011,570	1,981,235
Alongside stations in New York City	1,121,404	1,437,802
New York Harbor terminals of rail- roads in the State of New Jersey	1,531,968	1,556,415
Totals	4,664,942	4,975,452

4101

Coal storage yards

55. The Consolidated Edison Company of New York, Inc., has storage yards for the storage of current and reserve supplies of coal, for electric, gas and steam operations. The locations of these coal storage yards, and the approximate capacity of each in tons, are as follows:

Location of storage	Approximate capacity in tons of coal
Hunts Point—Hunts Point Avenue and East River, Bronx	150,000
Astoria—20th Avenue and 21st Street, Queens	375,000
East River—East River and 14th Street, Manhattan	15,000
Hell Gate—134th Street and Locust Avenue, Bronx	50,000
Rossville—Staten Island	50,000
Total storage	640,000

4102

*Board's Exhibit No. 2***Methods of delivery
and handling**

4103

55. The respondents do not own or operate any ships, barges, tugs, or freight-cars, for the transportation or delivery of coal, or any other materials, from the point of receiving delivery to the stations or storage yards of the respondents. The respondents own and operate five barges for conveying their coke from one of their stations to another, along the East River. Where the point of receiving delivery of coal is other than at a station or storage yard of one of the respondents, the transportation and handling of the coal thence to one of the stations or yards of the respondents are done by persons who are employees of the carrier and are not employees of the respondents. At stations or yards of the respondents, about 186 employees are engaged in unloading coal from the boats and storing it in yards at the stations or at the storage points, from which it is later taken, as needed, for production purposes. The respondents own and operate unloading equipment and coal conveying equipment at their principal stations and coal yards. Weekly or monthly shipping instructions are given for delivery of coal and oil. The shipment of coal and oil to, and their receipt by, some of the respondents is practically continuous throughout the year.

4104

**Purchases of gas-oil
for gas manufacture**

56. The Consolidated Edison Company of New York, Inc., purchases gas-oil, under contracts, for its gas operations. Such oil is produced at wells and refineries outside the City and State of New York, and is delivered by the seller to the purchaser, within the City of New York, in barges alongside the gas plants. The deliveries of gas-oil, during 1935 and 1936, to plants of the Consolidated Edison Company of New York group of Companies, were as follows:

Gas plant		Gallons of oil in 1935	Gallons of oil in 1936
Astoria	}	95,877,238	114,370,343
Hunts Point			

**Purchase of
copper, etc.**

57. The Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies, buy copper from time to time as needed for electric construction and operations. Such purchases are made under contracts, and delivery is made to the purchaser within the State of New York. Such copper is mined outside of the State of New York. Substantial quantities of the copper bought are purchased from concerns outside of the State of New York.

4106

58. The quantities of *copper* purchased, during 1935 and 1936, and the total amounts paid therefor, by Companies, were as follows:

Company	1935		1936	
	Pounds of copper	Amount paid	Pounds of copper	Amount paid
Consolidated Edison Company of New York, Inc., and its predecessor Companies	144,960	\$26,842	293,863	\$50,952
Brooklyn Edison Company, Inc.	5,504	1,562	5,353	1,555
New York and Queens Electric Light and Power Company	3,524	585	3,394	653
Totals	<u>153,988</u>	<u>\$28,989</u>	<u>303,110</u>	<u>\$53,160</u>

4107

4108

Board's Exhibit No. 2

Purchases
of cable

59. The total amounts paid for *cable* delivered to the Companies in 1935 and 1936, by Companies, for electric operations, were as follows:

	Company	1935	1936
		Amount Paid	Amount Paid
	Consolidated Edison Company of New York, Inc., and its predecessor Companies	\$1,694,367	\$2,343,866
4109	Brooklyn Edison Company, Inc.	334,626	682,384
	New York and Queens Electric Light and Power Company	735,940	1,071,344
	Westchester Lighting Company	108,423	376,290
	The Yonkers Electric Light and Power Company	21,771	185,956
	Totals	<u>\$2,895,127</u>	<u>\$4,659,840</u>

Of the above amounts of cable, \$1,651,451, or about 57 per cent, in 1935, and \$3,266,012, or about 70 per cent, in 1936, came from factories within the City or State of New York. Cable is purchased at a price per thousand feet. Delivery by the vendors to the respondents is made at store-rooms of the respondents or at locations where the cable is to be used within the State of New York. The total quantity in feet of cable delivered during the years 1935 and 1936 is:

4110

Feet of assorted sizes of cable

1935	1936
14,177,000	16,296,082

**Purchases of other
material and
equipment**

60. The Consolidated Edison Company of New York, Inc., and certain of its affiliated Companies, purchase other materials and equipment and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, incandescent lamps, etc., from dealers of whom most are located within the City or State of New York but some of whom are located outside of the State of New York. Such purchases are made under contracts or orders, which in most instances provide for delivery to one of the respondents within the State of New York; but in some instances delivery is made by the seller outside of the State of New York, and the transportation to one of the respondents is performed by others than employees of any of the respondents. Poles for new construction and for replacements in the electric distribution system of the respondents are similarly purchased from time to time as needed, under contract or as "spot" purchases are available. The approximate number of poles so purchased during 1935 and 1936, by Companies, and the amounts paid therefor, were:

4112

4113

Company	1935		1936	
	Number of poles	Amount paid	Number of poles	Amount paid
Brooklyn Edison Company, Inc.	1,890	\$23,760	1,533	\$12,276
New York and Queens Electric Light and Power Company	483	6,159	865	11,046
Westchester Lighting Company	2,421	34,592	2,412	30,354
The Yonkers Electric Light and Power Company	170	3,144	241	3,571
Totals	4,964	\$67,655	5,051	\$57,247

Board's Exhibit No. 2

Local municipal taxes
on materials purchased

61. The sales in intra-state commerce of the various materials, equipment and supplies purchased by any of the respondents in New York City (other than raw materials to be consumed directly in generation or manufacture) have been subjected to a sales tax imposed and collected by the City of New York with the authority of the Legislature of the State of New York.

Disposal of residual
by-products

62. Incidentally to the manufacture of gas, certain by-products of the distillation of coal and gas-oil are recovered. In quantity and value, the principal by-products are coke (including breeze), tar, light oils and sulphate of ammonia; and coke and tar by-products are in large part used by the Companies themselves as fuel in gas manufacture. The proceeds of such sales are treated as abatements of production expenses.

63. Principal by-products recovered in gas manufacture and sold to others (excluding quantities used by the Companies) were, in quantities sold and the net revenues received from such sales, in 1935 and 1936, as follows:

		Year 1935		Year 1936	
		Quantity	Amount	Quantity	Amount
Residuals					
Coke	Short Tons	332,748.42	\$2,253,674.74	319,656.70	\$2,096,854.00
Coke breeze	"	491.25	1,956.85	71.00	490.00
Water gas tar	Gals.	728,019	29,128.32	785,158	34,170.00
Drip oil	"	164,796	16,081.39	146,307	16,560.00
Reconditioned oil	"	25,819	2,694.47	75,052	7,280.00
Heavy tar	"	6,598,402	208,956.07	9,708,044	365,050.00
Light oil (Primary)	"	2,942,993	313,015.47	3,735,177	414,950.00
" " (Secondary)	"	.....	.....	134,993	8,090.00
Ammonia	Lbs.	555,940	5,559.40	72,150	720.00
Ammonia sulphate	"	25,281,470	248,540.49	17,891,026	185,470.00
Oven gas tar }	Gals.	8,792,364	331,794.92	9,070,526	355,610.00
Coal gas tar }					
Totals			\$3,411,402.12		\$3,485,330.00

From time to time as these by-products are recovered in gas operations, they are sold by the respondent Consolidated Edison Company to manufacturers or jobbers in New York City, for commercial uses. Delivery to the purchaser is in each instance made at the gas plant, within the City of New York. Such by-products are used by the purchasers for such drug, chemical and commercial purposes as they see fit. Products manufactured by the purchasers, from such by-products, are sold by them in trade and commerce.

4118

VII. DATA AS TO PARTICULAR CONSUMERS

64. Of the approximately 2,324,800 consumers¹ served by the Consolidated Edison Company group of Companies with *electric* service, about 1,896,800 are residential consumers, and about 427,100 are commercial consumers (preponderantly small), religious, educational, charitable and hospital consumers, and wholesale consumers. There are about 23,328 wholesale consumers of the respondents' electric service in New York City, which wholesale consumers include apartment and loft buildings, department stores, office buildings, industrial establishments, and theatres. Such wholesale users are about 1.08 per cent of the total consumers of electric service supplied by the respondents in New York City, and the revenues therefrom amount to about 34.09 per cent of the total electric revenues of the respondents in New York City. Of the approximately 1,165,700 consumers served by the Consolidated Edison Company group of Companies with *gas* service, about 1,154,100 are on the classification for general uses and are predominantly residential. About 11,600 consumers use gas for heating and wholesale uses.

4119

¹ All data in this stipulation, as to the number and classification of consumers, are based on the number of bills rendered to consumers in the month of December, 1936.

4120

*Board's Exhibit No. 2***Regulatory requirements
of the State of
New York**

4121

65. Under the Public Service Law of the State of New York (Sec. 66, subdivision 12), the Public Service Commission is empowered to require electric corporations and gas corporations subject to its jurisdiction to file, print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such electric corporations or gas corporations; and the Public Service Commission has by Order and regulations required the respondents which are subject to its jurisdiction to file with the Commission Rate Schedules embodying Service Classifications and rates, terms, and forms of contracts applicable thereto, for all general consumers, and to file with the Commission copies of special contracts with such consumers of the respondents as are public utilities, from which requirements are excepted rates and contracts with Federal, State and municipal authorities. The respondents subject to the jurisdiction of the Public Service Commission have accordingly filed and printed, and have kept and do keep open to public inspection, such Rate Schedules applicable to service to general consumers and have also filed copies of special contracts made with public utilities.

4122

The New York Public Service Law, the New York Transportation Corporations Law, other pertinent statutes enacted by the New York Legislature or by the local authorities in the territory of the respondents' operations, and the Rate Schedules and special service contracts filed by the respondents with the New York Public Service Commission may be referred to by any party hereto with the same force and effect as if their provi-

Board's Exhibit No. 2

4123

sions were fully set forth herein. As to the powers of the Public Service Commission to fix rates for service to governmental bodies, in the absence of a contract in force, reference is made to *City of New York v. Maltbie* (274 N. Y. 90, 98-99, decided April 27, 1937).

Particular consumer data
furnished upon request

66. The respondent public utilities furnished, as of December 31, 1936, electric service under regularly filed Service Classifications as set forth in their Electric Rate Schedules, to approximately 2,323,900 consumers¹, exclusive of governmental agencies (about 800) served under filed Service Classifications; gas service under regularly filed Service Classifications as set forth in their Gas Rate Schedules, to approximately 1,165,700 consumers; electric service under special contracts to about 100 accounts; and gas service under special contract to the City of New York.

4124

67. The Consolidated Edison Company group of Companies have among their customers various governmental and quasi-governmental agencies, and various private or quasi-public consumers, which have been specified by the Regional Attorney as those concerning which the respondents should supply information, without prejudice to respondents' contentions as to the materiality and relevancy of such information. To the consumers so specified, the following data are severally applicable:

4125

A. Federal Government Agencies

Electric service for lighting, heat, power and miscellaneous local uses is supplied to the Federal Govern-

¹All data in this stipulation, as to the number and classification of consumers, are based on the number of bills rendered to consumers in the month of December, 1936.

Board's Exhibit No. 2

4126

ment, within the franchise areas of the respective respondents, under a special contract with the United States Treasury Department. Instances of local premises so supplied are the General Post Office at No. 441 Eighth Avenue, the United States Barge Office, the United States Sub-Treasury, the Custom House at Bowling Green, the Appraiser's Warehouse at No. 201 Varick Street, the Federal Court House at Foley Square, a branch office of the Interstate Commerce Commission, a branch office of the United States Health Service, a branch office of the United States Weather Bureau, all in the Borough of Manhattan. Electric service is also supplied, under special contracts, to some 132 branch Post Offices and various Federal office buildings, warehouses, Courts, garages, Civilian Conservation Camps, etc., within the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in the City of Yonkers and Westchester County. The electrical energy used by the Federal Government on Governor's Island is supplied by the Consolidated Edison Company. The amounts paid therefor were \$41,341 in 1935, and \$42,617 in 1936.

4127

4128

Electricity supplied by the Consolidated Edison Company is used for operating pneumatic tubes between postal stations, equipment in stations, elevators, ventilators, etc. Postal operations are conducted on a twenty-four hour basis.

Electric service is supplied also, under filed Service Classification agreements with the State Procurement Division of the United States Treasury Department, to various WPA agencies for theatre, educational, housing and other projects, in the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in the City of Yonkers and Westchester County.

The total amount paid by the Federal Government to the respondent Companies for electric service was about \$368,145 in 1935 and about \$492,380 in 1936.

Gas service is supplied, under filed Service Classification agreements with the United States Treasury Department, for appliance usage and emergency fighting in various Post Offices in Manhattan, The Bronx, Queens, and Westchester County, and for cooking in the House of Detention at Nos. 427-31 West Street, Borough of Manhattan, for cooking and laboratory purposes in the Veterans' Hospital at No. 130 West Kingsbridge Road, Borough of The Bronx, for processing purposes at the Assay Office at No. 45 South Street, Borough of Manhattan, etc.

4130

Gas service is supplied also, under filed Service Classification agreements with the State Procurement Division of the United States Treasury Department, to various WPA and PWA projects for water heating and space heating, for laboratory work and cooking purposes.

The total amount paid by the Federal Government to the respondent Companies for gas service was about \$16,025 in 1935 and \$14,870 in 1936.

B. Western Union Telegraph Company

Electric service is supplied to the Western Union Telegraph Company, under a filed Service Classification, for the building located at No. 60 Hudson Street, Borough of Manhattan. The service is used for general lighting and power for the building, the operation of lighting and miscellaneous office power and for the operation of apparatus used in connection with the transmitting and receiving of telegraphic messages, both local and interstate. The Western Union Company maintains an electric generating plant, at this building, for an emergency supply of power for its requirements, in the event of an interruption of the central-station supply.

4131

Electric service is also supplied for some 210 miscellaneous Western Union business offices,

4132

Board's Exhibit No. 2

in the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in Westchester County.

The total amount paid by the Western Union Telegraph Company to the respondent Companies for electric service was about \$129,420 in 1935 and \$120,885 in 1936.

Gas service is supplied to several of the business offices for heating purposes. The total amount paid for such gas service was about \$4,450 in 1935 and \$4,825 in 1936.

4133

C. Postal Telegraph Company

Electric service supplied to the International Telephone Building Corporation, under a filed Service Classification, for the building located at Nos. 61-89 Broad Street, Borough of Manhattan, is in turn supplied the Postal Telegraph Company, occupying space in this building for executive offices and for sending and receiving equipment. The service is used by the Postal Telegraph Company for light and miscellaneous power and for the operation of transmitting and receiving equipment for telegraphic messages, both local and interstate.

4134

Electric service is supplied also for various business offices of the Postal Telegraph Company, located in Manhattan, The Bronx, Brooklyn, Queens, and Westchester County. There are approximately 140 such offices.

The total amount paid to the respondent Companies by the Postal Telegraph Company and the International Telephone Building Corporation, for electric service, was about \$72,665 in 1935 and \$77,620 in 1936.

Gas service is also supplied under filed Service Classifications at various locations, for general use. The total amount paid for such service was about \$450 in 1935 and \$365 in 1936.

D. Radio Corporation of America

Electric service is supplied under a filed Service Classification to the RCA Communications, Inc., a subsidiary of Radio Corporation of America, for the building located at No. 66 Broad Street, Borough of Manhattan, and is used for building light and power, office light and power, and for the operation of switchboards, etc., for Trans-Atlantic radio service. The total amount paid for such service was about \$35,700 in 1935 and \$39,000 in 1936.

4136

No gas service is supplied at such location.

E. Columbia Broadcasting System

Electric service is supplied under filed Service Classifications to the Columbia Broadcasting System, Inc., at the following locations, in the Borough of Manhattan:

- (a) No. 1699 Broadway and Nos. 213-23 West 53rd Street

Electric service is being supplied to the Columbia Broadcasting System, Inc., and is used for the operation of a studio theatre and to some extent for broadcasting purposes.

4137

- (b) Nos. 251-9 West 45th Street

Atlantic Broadcasting Company is being supplied with electric service for the operation of a studio theatre and to some extent for broadcasting purposes. The Atlantic Broadcasting Company is a subsidiary of the Columbia Broadcasting System, Inc.

The total amount paid by the Columbia Broadcasting System to the respondents for electric service was about \$3,220 in 1935 and \$6,430 in 1936.

No gas service is supplied at any of the above premises.

4138

*Board's Exhibit No. 2**F. New York Telephone Company*

Electric service is supplied under filed Service Classifications to the New York Telephone Company for the building located at No. 140 West Street, Borough of Manhattan, which contains executive offices and a business office, together with a telephone exchange.

The electric service is used for the operation of public light and power and for light and miscellaneous power in offices and for the operation of a telephone exchange.

4139

Electric service is supplied also to the New York Telephone Company for the building located at Nos. 24-42 Sixth Avenue, Borough of Manhattan, used as a telephone exchange for handling local and long distance communications.

The New York Telephone Company maintains at several locations emergency electric generating plants, to supply its requirements if the central-station supply of energy should be interrupted.

4140

The New York Telephone Company receives electric service at numerous other locations in Manhattan, The Bronx, Brooklyn, Queens, and Westchester County, for the operation of telephone exchanges, business offices, etc. There are approximately 45 such offices.

The total amount paid by the New York Telephone Company to the respondents for electric service was about \$892,810 in 1935 and \$851,150 in 1936.

Gas service is supplied under filed Service Classifications at various of these locations, for general uses. The total amount paid for such service was about \$23,880 in 1935 and \$23,460 in 1936.

G. Dow-Jones Tickers

Electric service supplied under filed Service Classifications to the Wall Street Journal Building Co., lo-

Board's Exhibit No. 2

4141

cated at No. 44 Broad Street, Borough of Manhattan, is used by Dow-Jones and Company, Inc., publishers of the Wall Street Journal.

Electric service is used by Dow-Jones and Company, Inc., for light and miscellaneous power for offices and newspaper publishing, and for the operation of the transmitting equipment for its financial news ticker service. The amount paid for such electric service was about \$13,725 in 1935 and \$14,440 in 1936.

Gas is used for processing purposes. The amount paid for such gas service was about \$915 in 1935 and \$815 in 1936.

4142

H. New York Stock Exchange

Electric service supplied under a filed Service Classification to the New York Stock Exchange Building Company for the building located at No. 11 Wall Street, Borough of Manhattan, is used by the New York Stock Exchange, for light and miscellaneous power in the operation of the Stock Exchange.

A related concern, the Stock Exchange Building and Quotation Company, located in the same premises, uses electric service for miscellaneous light and power and for the operation of the Stock Exchange ticker system for the sending out of stock quotations and transactions. This electric service is supplied under the agreement with the New York Stock Exchange Building Company.

4143

The total amount paid for the above electric service was about \$112,485 in 1935 and \$113,945 in 1936.

No gas service is supplied at this location.

I. Floyd Bennett Air Field

Electric energy is supplied this airport, situated in the Borough of Brooklyn, for general purposes, such as building lighting, field illumination, a radio beam, ob-

4144

Board's Exhibit No. 2

struction lighting, outline lighting, and hangar machine shops. The energy is supplied to the City of New York under the special contract with the City, and amounted to about \$6,150 in 1935 and \$8,420 in 1936 at the average City rate.

J. The New York Times

4145

Electric service is supplied to The New York Times Company at Nos. 217-47 West 43rd Street, Borough of Manhattan, for the operation of all of the power equipment of the printing plant, public light and power, lighting and miscellaneous power, in the general, editorial and executive offices.

Electric service is supplied also to The New York Times Company at Nos. 1475-1485 Broadway, Borough of Manhattan, for all of the requirements of the building, which consists of "current events" sign, public light and power, and general requirements.

4146

Electric service is received also by The New York Times Company, for the operation of various branch offices in the Boroughs of Manhattan and Brooklyn, and in Westchester County.

The total amount paid by The New York Times Company to the respondents for electric service was about \$149,585 in 1935 and \$152,260 in 1936.

Gas service is supplied to The New York Times Company at Nos. 217-47 West 43rd Street, Borough of Manhattan, for cooking and for various processing work. The amount paid for such gas service was about \$2,780 in 1935 and \$2,850 in 1936.

K. Companies operating electric ferries on the Hudson River

The respondent Companies do not supply electric service to any company operating an electric ferry on the Hudson River.

Service is supplied to various slips from which steam-propelled ferries operate on the Hudson River. Such service is used in the operation of waiting rooms, ticket offices, signs, approaches, etc., all of which are located in New York State.

Service is supplied, also under filed Service Classifications and under the special contract with the City of New York and under the special contract with the Federal Government, to ferry slips in the Boroughs of Manhattan, The Bronx, Brooklyn, and Queens, and in Westchester County, from which ferries operate on waters other than the Hudson River.

4148

L. Contracts relating to the furnishing of electricity to the navigation aids in New York Harbor

Electric energy for the operation of some of the devices used as navigation aids in New York Harbor, is furnished to the City of New York, under the special contracts with the City, to the extent of lights on a few bridges and for the ends of various piers and docks, and is furnished also, under the special contracts with the Federal Government, to the extent of some six light-houses and approximately eight beacon or harbor lights. The locations of these six light-houses are Fort Schuyler, North Brothers Island, Whitestone Point, foot of Dikeman Street in Brooklyn, foot of Beach Street in Brooklyn, and 26th Avenue and 2nd Street, Long Island City. The revenue from the Federal Government for this service (at the average Federal rate) was about \$560 in 1935 and \$540 in 1936.

4149

M. Electricity supplied to railroad companies

The Consolidated Edison Company supplies electricity to the Board of Transportation of the City of New York for the operation of the Independent Subway System of local rapid transit railroads within the City of

4150

Board's Exhibit No. 2

New York. In 1935, about 221,283,676 kilowatt hours were supplied for this purpose; and in 1936 about 290,614,173 kilowatt hours.

4151

Power for the operation of the subway and elevated railroad lines of the Interborough Rapid Transit System is supplied from the generating stations owned and operated by that system, in the Borough of Manhattan. For emergency requirements for power by either System, there is an interconnection between the lines of the Interborough System and those of the Consolidated Edison Company.

Power for the operation of the subway, elevated and street surface railroad lines of the Brooklyn-Manhattan Transit System is supplied from the generating stations owned and operated by that System, in the Borough of Brooklyn. For emergency requirements for power by either System, there is an interconnection between the lines of the Brooklyn-Manhattan Transit System and those of the Brooklyn Edison Company, Inc.

4152

The Consolidated Edison group of Companies supplies electric energy under contracts with the New York Central Railroad Company. Electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central Terminal, in part for the lighting and operation of various hotels, office buildings, and residential premises, upon terminal lands and appurtenant to the terminal property, and in part for the electric operation of local passenger trains upon the Hudson River Division of the Railroad as far as Croton, New York, and of through passenger trains as far as Harmon, New York. Various of the through trains so operated on that Division are a part of interstate transportation of passengers. Such through trains are changed from electric to steam operation at Harmon. Local passenger trains are operated electrically as far as Croton, New

York. No steam-propelled passenger trains ordinarily enter New York City on the Hudson River Division of this railroad. Electricity supplied by the Consolidated Edison Company is used for the air-conditioning of Pullman cars, in the yards of the New York Central Railroad Company within the City of New York. The total energy supplied to the New York Central Railroad Company for all purposes was 59,060,671 kilowatt hours in 1935 and 145,593,421 kilowatt hours in 1936. All such electricity was delivered by a respondent Electric Company to the Railroad Company at designated locations wholly within the State of New York; and none was transmitted by any of the respondents beyond the points of such delivery.

4154

The Consolidated Edison Company also supplies electric energy under contracts with the New York, New Haven and Hartford Railroad Company. Electric energy is used by the Railroad Company for the operation of its freight terminals and for its operation of passenger trains out of Grand Central Terminal, some of which trains are only for intrastate traffic, and others of which are for interstate traffic. The total energy supplied to the New York, New Haven and Hartford Railroad Company was 55,968,320 kilowatt hours in 1935 and 58,793,983 kilowatt hours in 1936. All such electricity was delivered to the Railroad Company by a respondent Electric Company at designated locations, wholly within the State of New York; and none was transmitted by any of the respondents beyond the points of such delivery.

4155

The Consolidated Edison Company also supplies energy under contract with the Hudson and Manhattan Railroad Company. The electric energy is used by that Company for the lighting and operation of its Hudson Terminal Buildings at Nos. 30 and 50 Church Street, Borough of Manhattan, and for the operation of its local rapid transit railroad from 33rd Street and

4156

Board's Exhibit No. 2

Sixth Avenue, in the Borough of Manhattan, southward underground along Sixth Avenue to Christopher Street, Borough of Manhattan, and thence by tunnel to Jersey City and Hoboken; also an interurban railroad from the Hudson Terminal Buildings, through the tube or tunnel under the North River, to Jersey City and Newark. The electricity sold to the Railroad Company was and is delivered to it at designated locations wholly within the City of New York, and none was transmitted by any of the respondents beyond the points of such delivery.

4157

The electricity sold and delivered to the Hudson and Manhattan Railroad Company in 1935 was 54,805,398 kilowatt hours and in 1936 was 57,221,097 kilowatt hours.

Steam service supplied by the New York Steam Corporation is used to operate compressors, for the operation of switches in the tunnel of the Pennsylvania Railroad Company under the North River.

N. Port of New York Authority, etc.

4158

The Consolidated Edison Company supplies electric energy under contracts with the Port of New York Authority. Electricity is used by such customer for the operation of its terminal and the Holland Tunnel, etc.

The Consolidated Edison Company also supplies electric energy to the Lehigh Valley Railroad Terminal for its terminal operation in Manhattan.

All such electricity was and is delivered by the Consolidated Edison Company to the customer at designated locations within the City of New York, and none was transmitted by the Consolidated Edison Company beyond the points of such delivery.

Of some 15 public bridges between Boroughs in the City of New York, all are supplied with electric energy for lighting, by the respondents, under the special contracts with the City of New York.

O. Highway lighting in Westchester County

In Westchester County various streets and boulevards which pass through villages are lighted by the Westchester Lighting Company or The Yonkers Electric Light and Power Company, under contracts with those villages. Street traffic signals are electrically operated under those contracts. The various parkways in Westchester County, maintained by the Westchester County Parkway Commission, are lighted by the Westchester Lighting Company or The Yonkers Electric Light and Power Company, under contracts with the County of Westchester. All such energy so delivered for street and parkway lighting was and is delivered and used wholly within Westchester County. Various parkways and highways in Westchester County are used by the public to reach main highways outside of Westchester County.

4160

P. Steamship piers

A majority of the piers of trans-atlantic and coastal steamship companies, along the East River and the North River; in the Borough of Manhattan, are supplied with electric energy by the Consolidated Edison Company, for lighting, freight handling, and related uses, within the City of New York.

4161

4162

*Board's Exhibit No. 2***VIII. NEW YORK STATE LABOR RELATIONS ACT**

68. On May 20, 1937, the New York State Labor Relations Act became a law, with the approval of The Governor of the State of New York, as Chapter 443 of the Laws of 1937, and is by reference made a part hereof. The Act creates a New York State Labor Relations Board, with jurisdiction, powers and duties as therein provided, and will be effective on and after July 1, 1937.

4163

Dated, New York, June 2, 1937.

DAVID A. MOSCOVITZ
REGIONAL ATTORNEY FOR THE SECOND
REGION, NATIONAL LABOR RELATIONS
BOARD

4164

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC., BROOKLYN EDISON
COMPANY, INC., NEW YORK AND QUEENS
ELECTRIC LIGHT AND POWER COM-
PANY, WESTCHESTER LIGHTING COM-
PANY, THE YONKERS ELECTRIC LIGHT
AND POWER COMPANY, NEW YORK
STEAM CORPORATION, and CONSOLI-
DATED TELEGRAPH AND ELECTRICAL
SUBWAY COMPANY

By

WHITMAN, RANSOM, COULSON and GOETZ,
*Attorneys for the respondents, appearing
specially and only for the purposes
stated in the Notice of Motion dated
May 17, 1937.*

EXHIBIT NO 1

--- ELECTRIC ---

GENERATING STATIONS

CONSOLIDATED EDISON CO. OF N.Y., INC.

182 WATERSIDES 4 SHERMAN CREEK
3 EAST RIVER 5 HELL GATE
6 FORT MORRIS

BROOKLYN EDISON COMPANY, INC.

7 HUDSON AVE 8 GOLD ST.
9-66TH ST.

THE YONKERS EL. L.T. & P.R. COMPANY

18 GLENWOOD

SUBSTATIONS

CONSOLIDATED EDISON CO. OF N.Y., INC.

11 STONE ST.	37 W. 41ST ST.
12 WATER ST.	38 E. 41ST ST.
13 GOLD ST.	39 W. 45TH ST.
14 CEDAR ST.	40 W. 48TH ST.
15 PARK PLACE	41 E. 51ST ST.
16 DRANE ST.	42 W. 53TH ST.
17 ELIZABETH ST.	43 W. 54TH ST.
18 BOWERY	44 E. 60TH ST.
19 THOMPSON ST.	45 W. 64TH ST.
20 VANDAM ST.	46 W. 65TH ST.
21 CROSBY ST.	47 E. 75TH ST.
22 CLINTON ST.	48 E. 83TH ST.
23 GREENE ST.	49 W. 84TH ST.
24 E. 6TH ST.	50 E. 94TH ST.
25 HORTON ST.	51 W. 97TH ST.
26 E. 12TH ST.	52 E. 103TH ST.
27 W. 16TH ST.	53 W. 107TH ST.
28 W. 22TH ST.	54 E. 121ST ST.
29 W. 26TH ST.	55 W. 123TH ST.
30 E. 28TH ST.	56 WELFARE IS.
31 W. 27TH ST.	57 HUNTS POINT
32 E. 32TH ST.	58 BIRCHWOOD AVE
33 W. 34TH ST.	59 WEST FARMS
34 W. 39TH ST.	60 E. 106TH ST.
35 E. 35TH ST.	61 W. 129TH ST.
36 MADISON AVE	62 ST. PETER'S AVE
63 LACONIA AVE	

N.Y. & QUEENS EL. L.T. & P.R. COMPANY

110 HAMILTON ST. 161 BAYSIDE
140 WOODSIDE 170 JAMAICA
150 MASPETH 180 WOODHAVEN
180 FLUSHING 190 HOLLS
191 SPRINGFIELD

BROOKLYN EDISON COMPANY, INC.

200 PEARL ST. 223 TILDER AVE
201 ROCKWELL PL. 224 JOHNSON ST.
205 LORIMER ST. 227 FIFTH AVE
209 ANSLIE ST. 228 LIVONIA AVE
212 WASHINGTON AVE 230 NICKS ST.
214 JAY ST. 232 32ND ST.
222 W. 12TH ST. 234 42ND ST.
236 KINGS HIGHWAY

WESTCHESTER LIGHTING COMPANY

305 MT. VERNON 360 ELMSFORD
315 NEW ROCHELLE 365 TARRYTOWN
335 EASTCHESTER 370 BRANCLIFF
340 MAMARONECK 375 OSSING
345 HASTINGS 380 MILLWOOD
350 PORT CHESTER 381 YORKTOWN
355 WHITE PLAINS 385 MT. KISCO
390 PEESKILL

THE YONKERS EL. L.T. & P.R. COMPANY

410 COLUMBUS AVE 430 DUNWOODIE

--- GAS ---

MANUFACTURING PLANTS

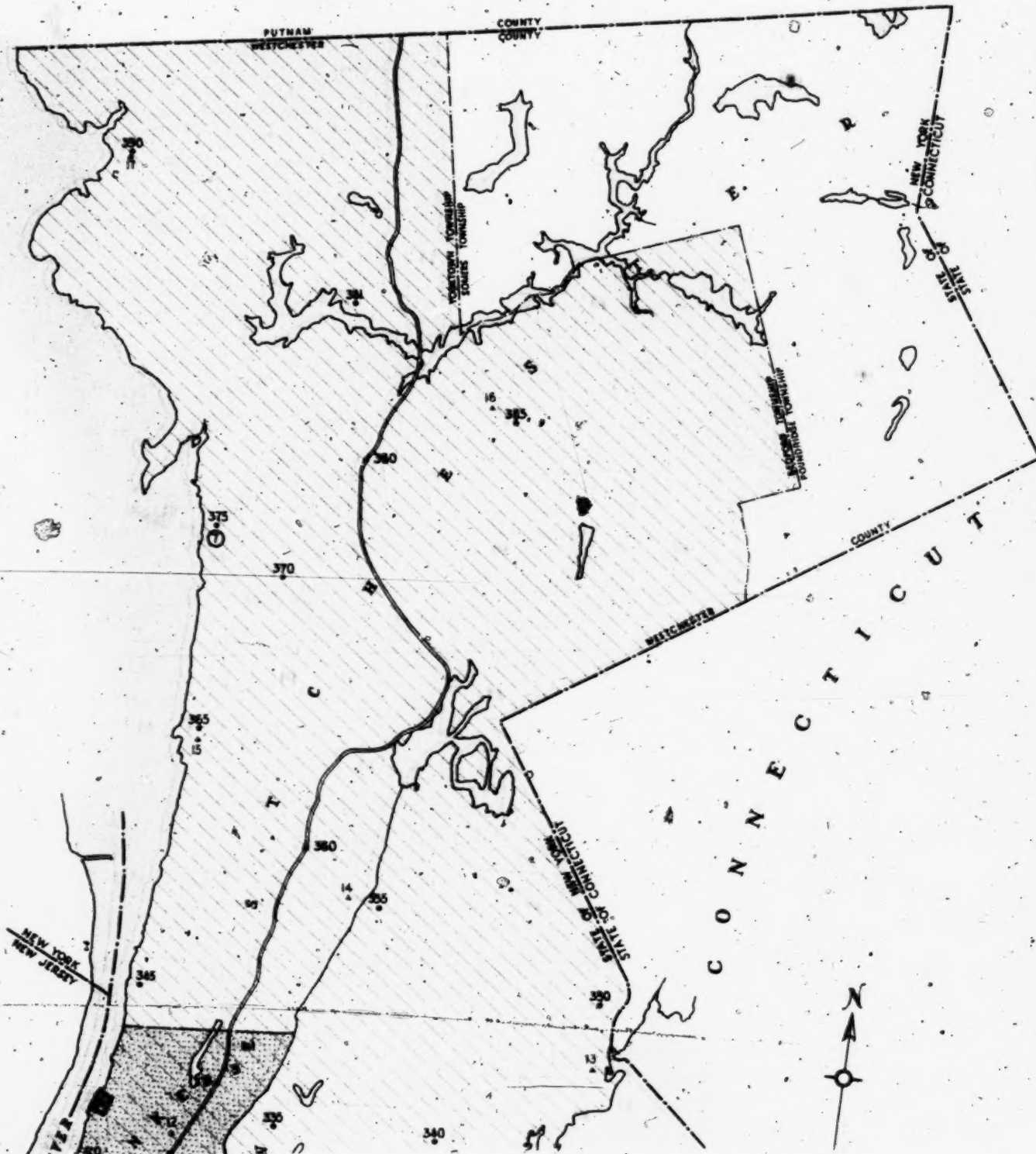
CONSOLIDATED EDISON CO. OF N.Y., INC.

1 HUNTS POINT 3 ASTORIA
2 OGDON HILL 4 RAVENSWOOD
5 FLUSHING

WESTCHESTER LIGHTING COMPANY

6 PELHAM 7 OSSING

HOLDER STATIONS



410 COLUMBUS AVE 430 BUNY

---GAS---

MANUFACTURING PLANTS

CONSOLIDATED EDISON CO. OF N.Y., INC.

- | | |
|----------------|------------|
| 1. HUNTS POINT | 3. ASTORIA |
| 2. O'CONNELL | 4. BAYVIEW |
| 5. FLUSHING | |

WESTCHESTER LIGHTING COMPANY

- | | |
|-----------|-----------|
| 6. PELHAM | 7. OGBURN |
|-----------|-----------|

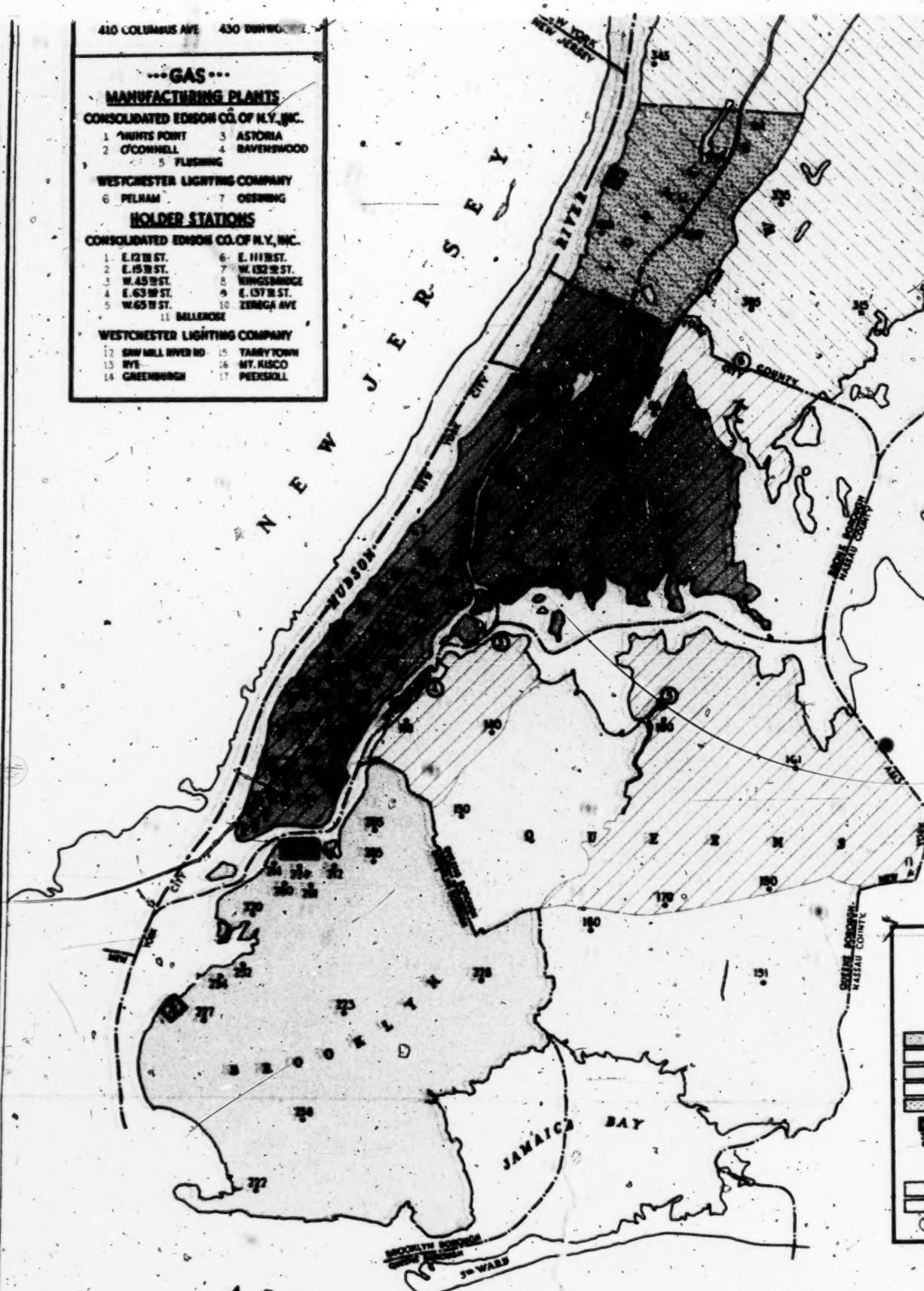
HOLDER STATIONS

CONSOLIDATED EDISON CO. OF N.Y., INC.

- | | |
|----------------|-----------------|
| 1. E. 12th ST. | 6. E. 11th ST. |
| 2. E. 15th ST. | 7. W. 132nd ST. |
| 3. W. 45th ST. | 8. WINGSPAN |
| 4. E. 63rd ST. | 9. E. 137th ST. |
| 5. W. 65th ST. | 10. ZENITH AVE |
| 11. BELLEROS | |

WESTCHESTER LIGHTING COMPANY

- | | |
|-----------------------|---------------|
| 12. SAW MILL RIVER RD | 15. TARRYTOWN |
| 13. RYE | 16. MT. KISCO |
| 14. GREENBURGH | 17. PEESKILL |



**CONSOLIDATED EDISON COMPANY OF N.Y., INC.
AND AFFILIATED COMPANIES**

.... ELECTRIC

- | | | |
|--|---|---------------------------------|
| | TERRITORY SERVED BY CONSOLIDATED EDISON CO. OF N.Y., INC. IN BOROUGH OF MANHATTAN & BRONX | |
| | NEW YORK & QUEENS EL. LT. & PR. CO. IN BOROUGH OF QUEENS | |
| | BROOKLYN EDISON CO., INC. IN BOROUGH OF BROOKLYN | |
| | WESTCHESTER LIGHTING CO. IN COUNTY OF WESTCHESTER & BOROUGH OF BRONX | |
| | THE YONKERS EL. LT. & PR. CO. IN CITY OF YONKERS | |
| | GENERATING STATION | |
| | DISTRIBUTION STATION | |
| | | TRANSMISSION LINE - UNDERGROUND |
| | | TRANSMISSION LINE - OVERHEAD |

.... GAS

- | | |
|--|---|
| | TERRITORY SERVED BY CONSOLIDATED EDISON CO. OF N.Y., INC. IN CITY OF NEW YORK |
| | BY WESTCHESTER LIGHTING CO. IN COUNTY OF WESTCHESTER |
| | GAS MANUFACTURING PLANT |
| | GAS HOLDER STATION |

0 1 2 3 4 5
APPROXIMATE SCALE OF MILES

EXHIBIT #2

GENERATING STATIONS AND DISTRIBUTING MAINS OF NEW YORK STEAM CORPORATION

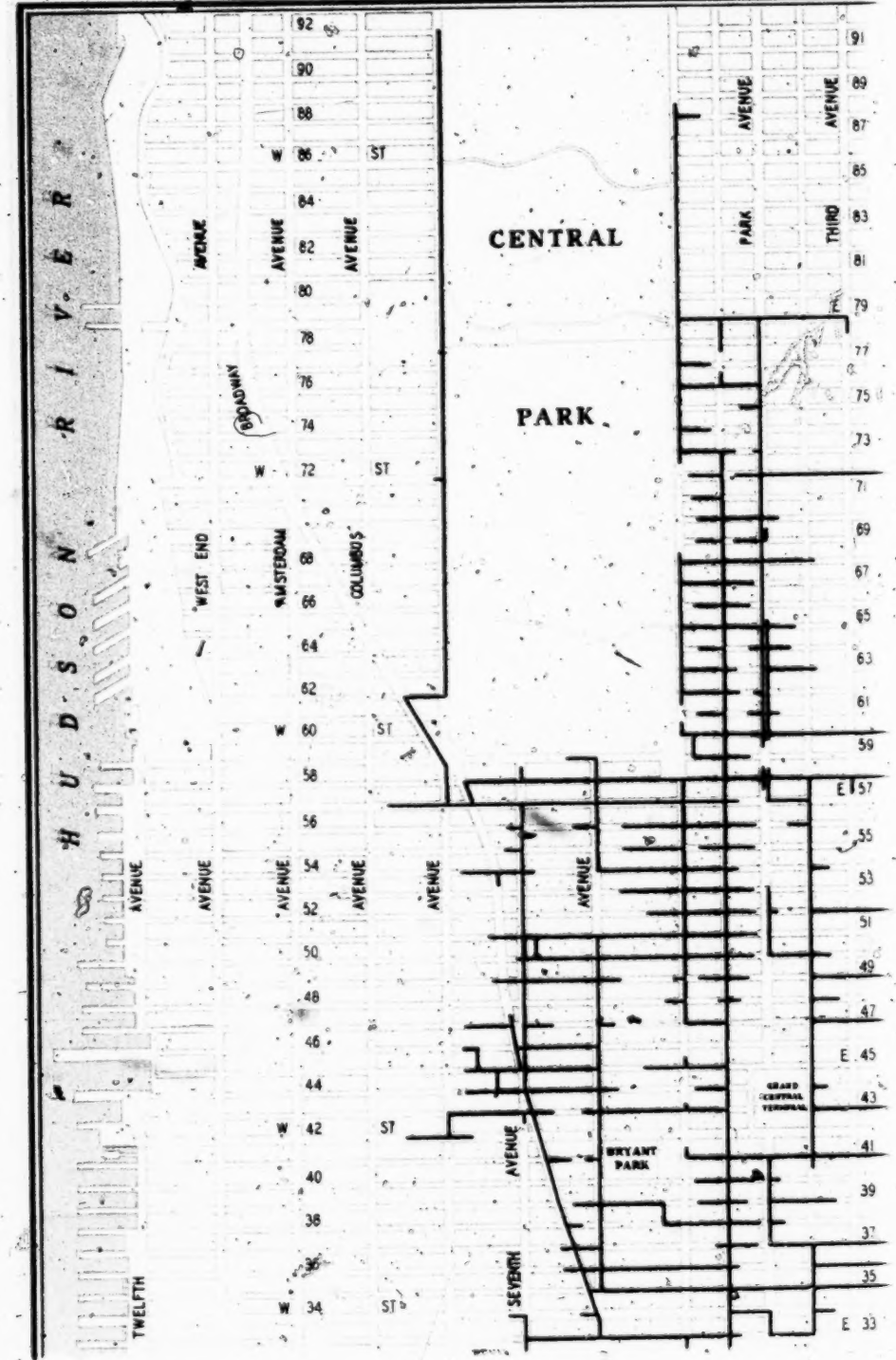
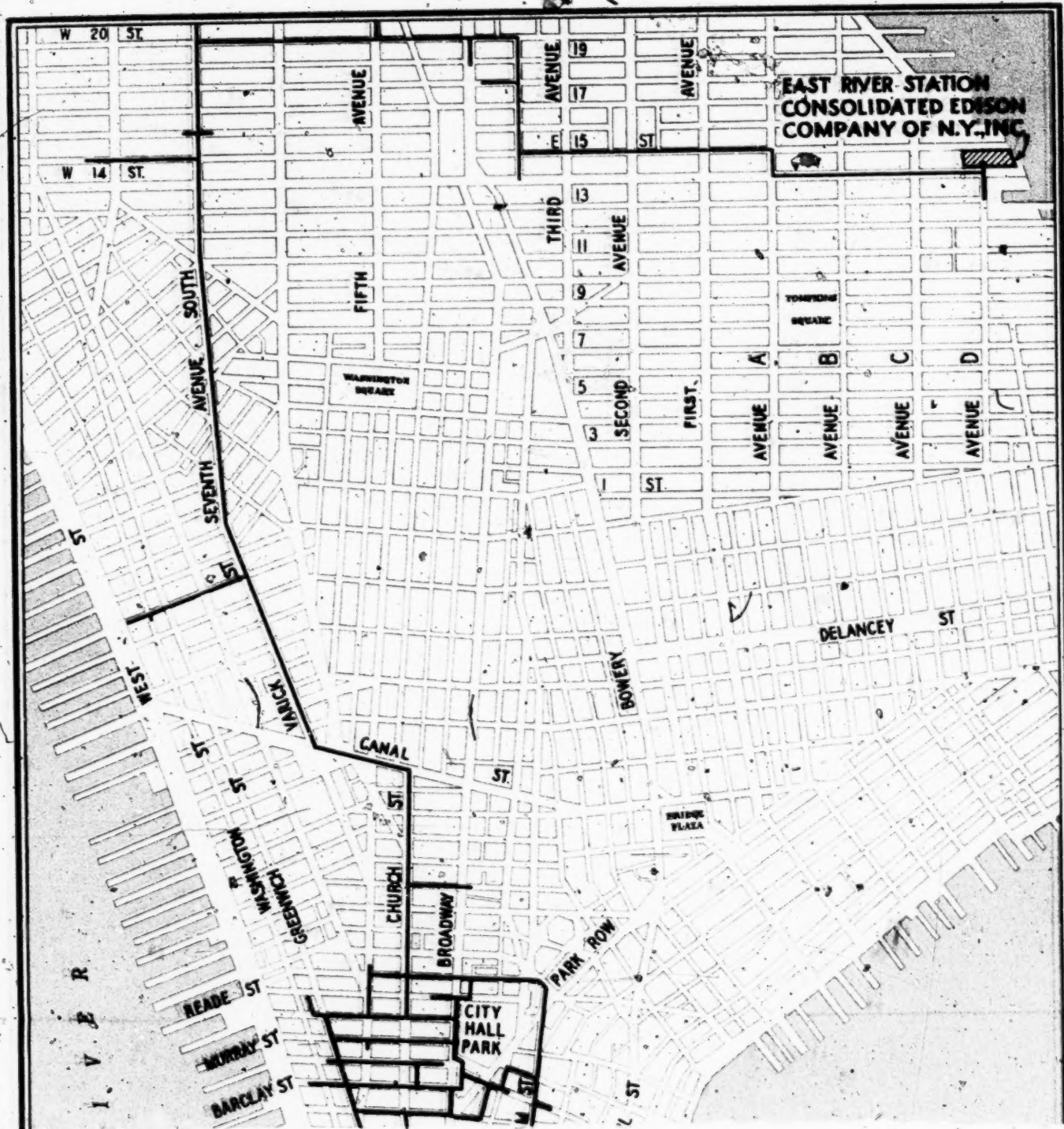
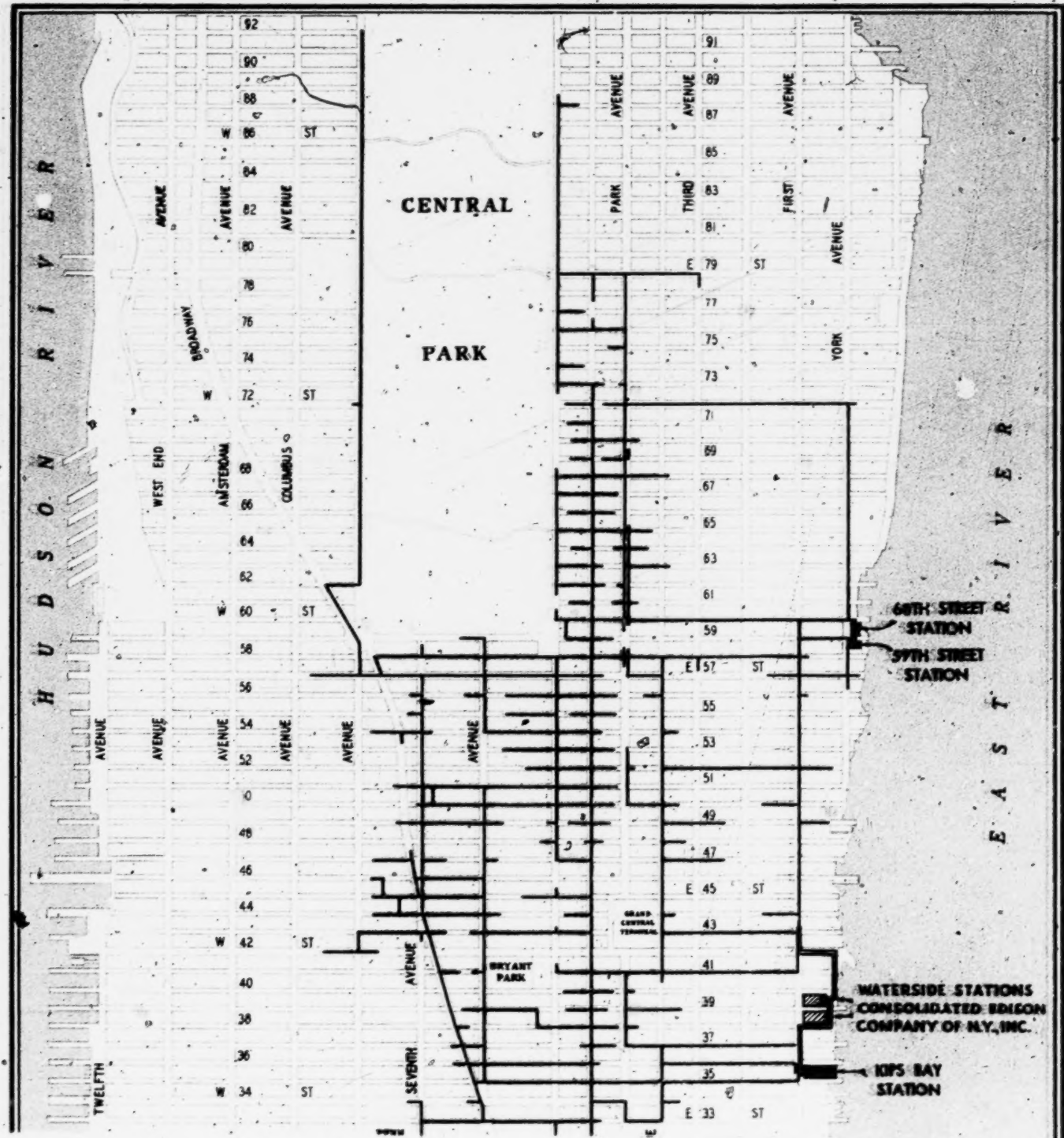
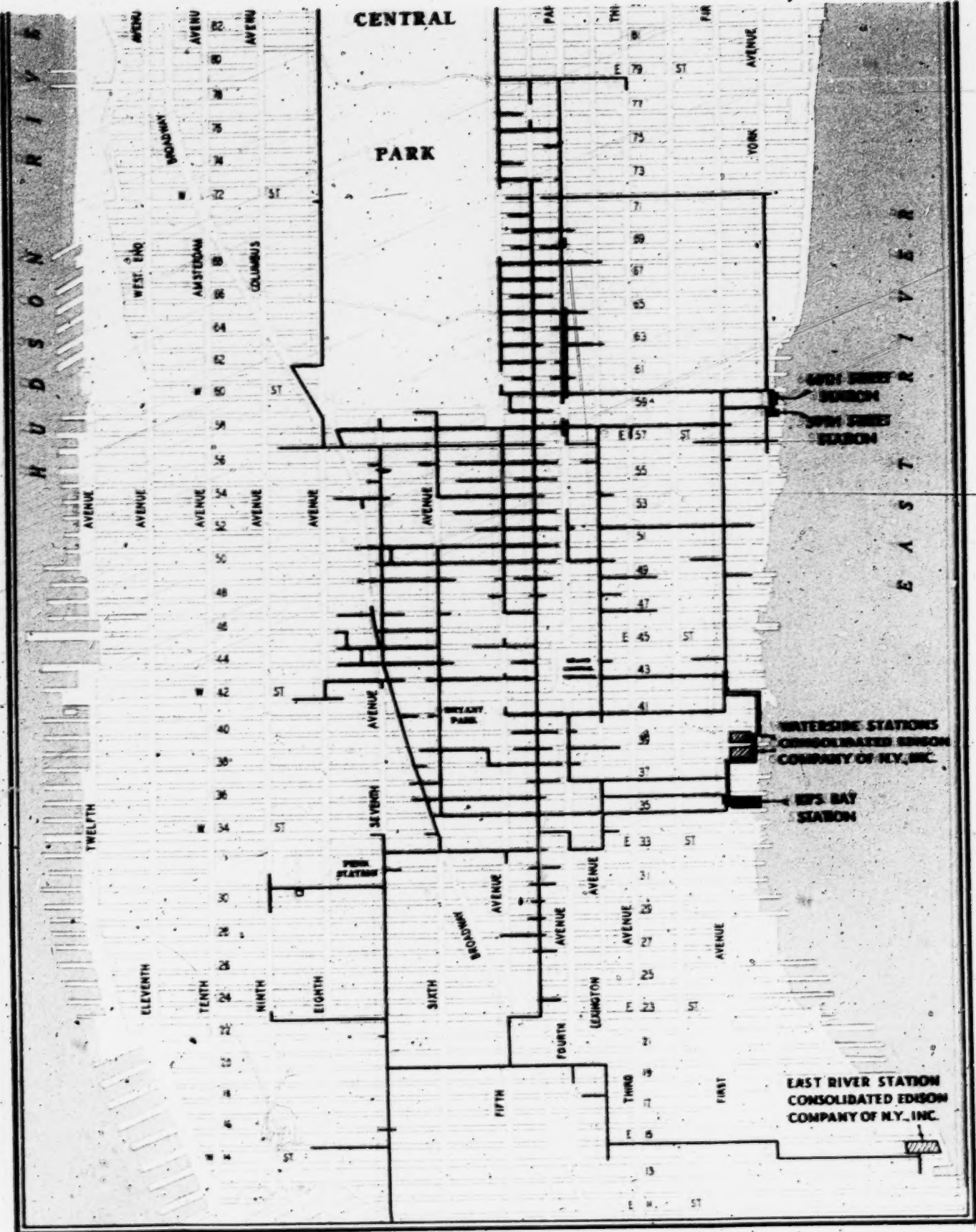
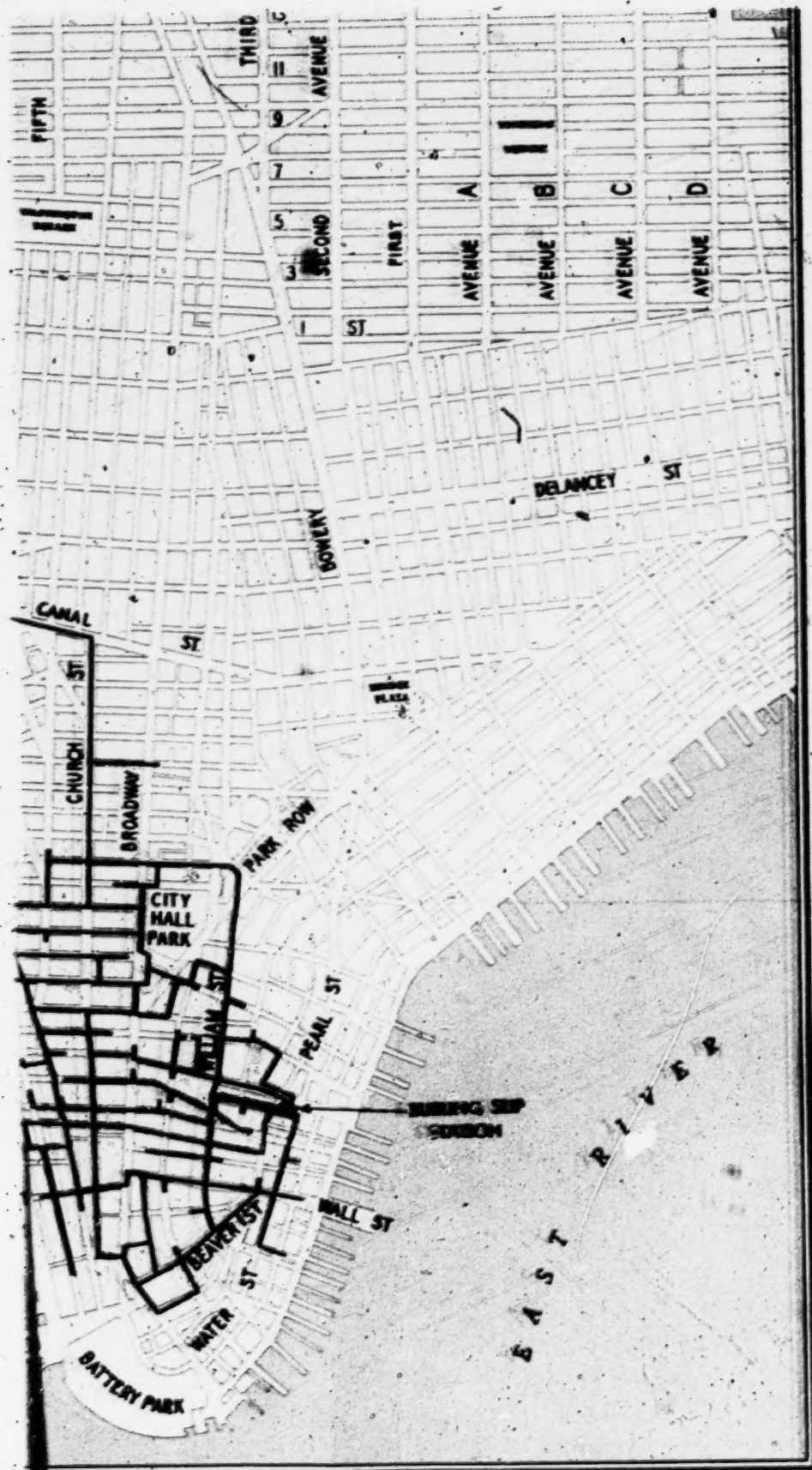


EXHIBIT #2

STATIONS AND DISTRIBUTING MAINS OF NEW YORK STEAM CORPORATION





Board's Exhibit No. 4

COPY OF AN ORDER OF THE BOARD, DATED JUNE 2, 1937, DENYING THE PETITION AND MOTION OF THE RESPONDENT COMPANIES FOR A PRIOR AND SEPARATE HEARING AS TO JURISDICTION AND FOR DISMISSAL OF THE COMPLAINT FOR WANT OF JURISDICTION.

[Printed at page 38, *ante*]

Board's Exhibit No. 5

NOTICE OF MOTION BY THE BOARD TO AMEND ITS COMPLAINT BY ADDING THE NAME OF STEPHEN L. SOLOSY AS ONE OF THE PERSONS NAMED IN PARAGRAPH 19 OF THE COMPLAINT AS HAVING BEEN DISCHARGED BY THE COMPANIES.

[Printed at page 40, *ante*]

4168

Board's Exhibit No. 10

**LETTER DATED NOVEMBER 1, 1934, FROM MR.
WERSING TO MR. KENNEDY**

11/1/34

Dear Mr. Kennedy

4169

Through a mutual friend I have heard that you are becoming increasingly aware of the futility of our Employees' Representation Plan as an affective means of getting any tangible benefits for yourself and the men you represent.

I too have reached that same conclusion and I believe I have also found the answer to the question which this conclusion raised in my mind—the Brotherhood of Utility Employees of America of which I am now a member.

I should very much like to meet you and talk with you on this subject. Since I am working in the Main Office at night my only opportunity would be on a Saturday or Sunday.

4170

If you are interested won't you drop me a line.

Sincerely yours,

MARTIN A. WERSING

3248—30 St.
Long Island City.

REPLY DATED JANUARY 4, 1937, OF MR. EDWARD P. PREZZANO TO MR. STRAUB'S LETTER (RESPONDENT'S EXHIBIT No. 15).

BRONX GAS AND ELECTRIC COMPANY

E. P. PREZZANO

President

43 Westchester Square
Bronx, New York City

January 4, 1937

Mr. Harry J. Straub,
43 Westchester Square,
Bronx, New York.

4172

Dear Harry:

The receipt of your letter was a very gratifying start for my New Year—and with your permission, I shall pass it along to Mr. Wilder and Mr. Carrell that they may know of your appreciation.

I want to thank you for your thoughtfulness in writing to me, and assure you that it is my personal wish that the New Year may hold a full store of good health and success for you.

4173

Sincerely yours,

(Sgd) E. P. PREZZANO

President.

K.

4174

Board's Exhibit No. 13

**LETTER FROM MR. D. W. TRACY, PRESIDENT
OF THE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, TO MR. FLOYD L. CAR-
LISLE, DATED APRIL 16, 1937.**

D. W. TRACY,
International President

G. M. BUGNIAZET,
International Secretary

4175

**INTERNATIONAL BROTHERHOOD
ELECTRICAL WORKERS
1200 Fifteenth Street, N. W.
Washington, D. C.**

New York City,
April 16, 1937

Floyd L. Carlisle,
Chairman of Board,
Consolidated Edison Co. of N. Y., Inc.

Dear Sir:

4176

Further in re my previous efforts in behalf of mem-
bers of the International Brotherhood of Electrical
Workers employed on the properties of the Consolidated
Edison system and consistent with the rights of those
employees to bargain collectively through the Brother-
hood, I as International President of the IBEW, demand
recognition of our organization as the collective bargain-
ing agency and herewith submit the attached proposal of
agreement for negotiation on a collective bargaining
basis between the Consolidated Edison Company of New
York, Inc., and the International Brotherhood of Elec-
trical Workers.

The writer is registered at the Roosevelt Hotel in
New York City awaiting your prompt reply to this pro-
posal.

Sincerely,

(Signed) D. W. TRACY
International President

Brotherhood Electrical Workers

1393

4177

Board's Exhibit No. 13(a)

REPLY OF MR. CARLISLE TO MR. TRACY, DATED
APRIL 20, 1937

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

Office of
Chairman of Board

April 20, 1937

4178

Mr. D. W. Tracy, International President
International Brotherhood of Electrical Workers,
1200 Fifteenth Street, N.W.,
Washington, D.C.

Dear Sir:

I acknowledge receiving your letter of April 16th.
Consolidated Edison Company of New York, Inc.,
agrees to bargain collectively through the Brotherhood,
and will proceed with negotiations looking to a contract
along the lines of the proposed agreement enclosed.

Yours very truly,

4179

FLOYD L. CARLISLE

4180

Board's Exhibit No. 14

**MEMORANDUM OF AGREEMENT BETWEEN
CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., AND INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS AND ITS LO-
CAL UNION No. B829, DATED JUNE 15, 1937.**

Memorandum of Agreement**Between**

4181

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

and the

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

Through Its

LOCAL UNION No. B829

4182

Effective June 15th, 1937

Agreement between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (hereinafter referred to as the "Edison Company") and the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (hereinafter called the "Brotherhood"):

WITNESSETH: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of em-

employees of the Edison Company who are members of the Brotherhood and enable the Edison Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

ARTICLE I

SCOPE

1. This agreement shall apply to all employees of the Edison Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

4184

ARTICLE II

NO DISCRIMINATION

2. The Edison Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Edison Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Edison Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Edison Company time or property.

4185

ARTICLE III

HOURS AND WORKING CONDITIONS

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight

4186

Board's Exhibit No. 14

4187

(8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4188

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Edison Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

ARTICLE IV**VACATIONS**

5. Each employee who was in the employ of the Edison Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after

September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

RIDER

Correcting Article IV, Section 5

VACATIONS

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

4190

Executed, June 15th, 1937.

$\left\{ \begin{array}{l} \text{J. J. D.} \\ \text{W. J. E.} \\ \text{E. F. G.} \\ \text{D. W. T.} \end{array} \right\}$	$\left\{ \begin{array}{l} \text{R. H. T.} \\ \text{C. M. B. Jr.} \end{array} \right\}$
--	--

4191

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Edison Company, in order to insure orderly operation and adequate and continuous service to the public.

ARTICLE V

WAGES AND CLASSIFICATIONS

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be

4192

Board's Exhibit No. 14

made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

RIDER*to Article V, Section 7*

4193

WAGES AND CLASSIFICATIONS

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

4194

Executed, June 15th, 1937.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By R. H. Tapscott,
President

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS

By D. W. Tracy
International President

Attest:

C. M. Breidenbach, Jr.
Assistant Secretary

LOCAL UNION No. B829

Joseph J. Delvac
Wm. J. Eitelbach
E. F. Galschjodt

ARTICLE VI

PROVISIONS FOR SICKNESS, DISABILITY, SUPERANNUATION,
RETIREMENT, ETC.

8. The Edison Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Edison Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Edison Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

4196

ARTICLE VII

LAY-OFFS, PROMOTIONS AND DEMOTIONS

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

4197

4198

Board's Exhibit No. 14

10. The Edison Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

ARTICLE VIII**SAFETY**

4199

11. The Edison Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Edison Company in accordance with the practice now prevailing in such department.

ARTICLE IX**MANAGEMENT**

4200

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Edison Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

ARTICLE X**ADJUSTMENT AND ARBITRATION**

13. Should any labor dispute or difference arise between the Edison Company and the Brotherhood or its members employed by the Edison Company, as to the

meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

FIRST: Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

SECOND: Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

4202

THIRD: Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

FOURTH: Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Edison Company; and

4203

FIFTH: In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Edison Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Edison Company may

4204

Board's Exhibit No. 14

ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Edison Company, and upon the Brotherhood and its members, for the duration of this agreement.

7.

4205

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

4206

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

FIRST, to attend regularly scheduled meetings of such grievance committee;

SECOND, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

THIRD, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his de-

partment superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

ARTICLE XI

RIGHT OF REVIEW OF DISCHARGE

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

4208

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Edison Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

4209

ARTICLE XII

FUTURE NEGOTIATIONS AND OUTLAWING OF STRIKES AND LOCKOUTS

18. Joint conferences between representatives of the Edison Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the par-

4210

Board's Exhibit No. 14

4211

ties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Edison Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Edison Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party because of or during such disagreement.

4212

ARTICLE XIII

DURATION OF AGREEMENT

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

Board's Exhibit No. 14

421

IN WITNESS WHEREOF, CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC., and the BROTHERHOOD and its LOCAL
UNION have executed this agreement the 15th day of
June, 1937.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By R. H. Tapscott,
President

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS

By D. W. Tracy
International President

Attest:

C. M. Breidenbach, Jr.
Assistant Secretary

LOCAL UNION No. B829

Joseph J. Delvac
Wm. J. Eitelbach
E. F. Galschjodt

421

421

4216

Board's Exhibit No. 15

**LETTER FROM MR. D. W. TRACY TO MR. GANLEY,
DATED APRIL 21, 1937**

**INTERNATIONAL BROTHERHOOD
ELECTRICAL WORKERS
1200 Fifteenth Street, N.W.
Washington, D. C.**

April 21, 1937

4217

William P. Ganley
Chairman—General Council
4 Irving Place
Room 1237
New York, N. Y.

Dear Sir:

4218

Confirming the understanding reached at our conference of today, I am advising that I through you invited the employees of the electrical department of the Consolidated Edison Company employed in Manhattan and the Bronx to affiliate with our organization through membership in the International Brotherhood of Electrical Workers, affiliated with the A. F. of L. under the following conditions:

The International Brotherhood of Electrical Workers will issue a charter for a local union to the indicated council group.

It is understood and agreed between yourself and your committee representing your group of employees together with the writer that no change in the present officer or representative personnel of the council will be required by the IBEW—provided such personnel in its

Board's Exhibit No. 15

4219

entirety consists of members of the IBEW in good standing—until December 1937 when the present laws of the council specify an election shall be held.

It is further understood and agreed that policy involved in the present method of representing the employees will not be changed—except that no officer, representative or delegate of the group shall after affiliation with IBEW accept compensation from company management or other agencies of the employer for time consumed in handling council matters or representing members of the group—until December 1937 when present council policies will be substituted for by the procedures adopted by the employee members of the group consistent with the policies and constitution of the IBEW.

4220

Sincerely,

(Signed) D W TRACY
International President

4221

4222

Respondents' Exhibit No. 2

CERTIFIED COPY OF THE OPINION OF CAFFEY, U.S.D.J., IN ENTERING THE JUDGMENT IN CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ET AL. v. LAMAR HARDY, ET AL.

UNITED STATES OF AMERICA }
SOUTHERN DISTRICT OF NEW YORK } ss.:

4223

I, CHARLES WEISER, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the writings annexed to this certificate namely, Opinion filed by Hon. Francis G. Caffey, U. S. District Judge, in the case entitled Consolidated Edison Company of New York, et al vs. Lamar Hardy, U. S. Attorney, et al Equity No. 81-377; have been compared with their originals on file and remaining of record in this office; that they are correct transcripts therefrom and of the whole of the said originals.

4224

(Seal)

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 2d day of June in the year of our Lord one thousand nine hundred and thirty-seven and of the Independence of the United States the One Hundred and Sixty-first.

CHARLES WEISER
Clerk.

[Filed July 31, 1936]

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC., *et al.*,

Plaintiffs,

against

LAMAR HARDY, United States Attorney for the Southern District of New York; ALBERT GOLDMAN, Postmaster for the Boroughs of Manhattan and The Bronx, City of New York; RAYMOND J. MULLIGAN, United States Marshal for the Southern District of New York; LEO J. HICKEY, United States Attorney for the Eastern District of New York; FRANCIS J. SINNOTT, Postmaster for the Borough of Brooklyn, City of New York; ALBERT C. BENNINGER, United States Marshal for the Eastern District of New York; *et al.*, *Defendants.*

In Equity
No. 81/377.

MESSRS. WHITMAN, RANSOM, COULSON & GOETZ,

Solicitors for Plaintiffs;

John W. Davis, Esq.,

William L. Ransom, Esq., and

Henry Jaffe, Esq., *of Counsel.*

The bill alleges that the plaintiffs are not subject to the terms of the Public Utility Act of 1935 (Session

4228

Respondents' Exhibit No. 2

Laws, 1st Session 74th Congress, chap. 687, p. 803), and that the Act is unconstitutional. The prayer is that enforcement of the statute against the plaintiffs be enjoined; also that a declaratory judgment be entered, pursuant to Section 274 (d) of the Judicial Code (28 U. S. C. A., sec. 400), decreeing the statute unconstitutional.

4229

Decrees *pro confesso* have been taken against five defendants. As to them, the plaintiffs now move for a final decree (in a form annexed to the notice of motion) granting the two kinds of relief asked for in the bill "and for such further and different relief as may be proper."

When the motion was argued none of the five defendants concerned appeared, either personally or by counsel. A lawyer in the Government service was in the court room at the time. When questioned he replied that he knew nothing of the case, did not desire to be heard and was present merely as an observer, under instructions to report what happened.

4230

Counsel for the plaintiffs, when presenting their side, called attention to *Masterson v. Howard*, 18 Wall. 99, and *Thomson v. Wooster*, 114 U. S. 104, as having a possible bearing on the duty of the court. I have had no assistance, however, from counsel for the defendants. In consequence, I have been compelled myself to investigate the matter and to search the authorities. Because I have been engrossed in other court matters having preference, I have had no time earlier to do this.

A decree *pro confesso* admits only well pleaded facts (*Thomson v. Wooster*, *supra*). Confining consideration to those, the concession by the five defendants is not of the conclusions alleged in the bill or of the plaintiffs' claim of right either to an injunction or to a declaratory judgment. The concession is merely that the corporate plaintiffs are engaged exclusively in intra-State business

and do nothing which directly burdens or affects interstate or foreign commerce. These are the pertinent averments of facts well pleaded in the bill (paragraphs 9 to 12, 40, 44 and 47). That being true, I think Section 3 exempts the corporate plaintiffs from the operation of the Act.

It is to be noted that Section 3 deals with the Securities and Exchange Commission. It prescribes duties of that body. It provides that these duties shall be performed by making rules and regulations or by making orders on application. Nevertheless, the legislative direction is peremptory. The Commission is afforded no alternative save to exempt "from any provision or provisions" of the statute all holding companies and their subsidiaries (defined in Section 2) such as, for the purpose of this case, the corporate plaintiffs, through the allegations of the bill and the decrees *pro confesso*, are established to be.

4232

So also, even though the Commission should fail to adopt rules and regulations in conformity with Section 3 or the corporate plaintiffs have refrained from applying to the Commission for exemption from the provisions of the Act, the five defendants here involved would disobey the substantive requirements of the section if they undertook to enforce against the corporate plaintiffs any penalty mentioned in the Act.

4233

So far as concerns the defendants sought to be enjoined, their action need not depend on what the Commission does or does not do (Cf. *United States v. Morgan*, 222 U. S. 274). As to them at least, I think it clear that Section 3 can reasonably be interpreted as an expression by Congress itself of the intention that corporations of the conceded type of the plaintiffs should not be brought within the influence or control of the statute. Certainly,

4234

Respondents' Exhibit No. 2

as I see it, the language employed in the section is susceptible of that construction. If so, then that meaning must be ascribed to it in order to avoid even a doubt as to constitutionality (*Crowell v. Benson*, 285 U. S. 22, 62; *United States v. Shreveport Grain & El. Co.*, 286 U. S. 77, 82; *I. C. C. v. Oregon-Washington R. R. Co.*, 288 U. S. 14, 40).

If the corporate plaintiffs be exempt from the provisions of the Act, of course the individual plaintiffs are likewise unaffected by those provisions.

4235

It follows that the plaintiffs are entitled to the injunction they have requested. Paragraphs (1), (2) and (3) of decree proposed seem to me appropriate to accomplish the result:

4236

In a brief filed by one not a party to this suit I have been asked to take into account two actions, L.62/244 and E.82/375, pending in this court, between himself and one of the corporate plaintiffs. In effect it is asserted that in those cases, the corporate plaintiff here which is defendant there, at variance with what appears from the bill and the decrees *pro confesso* now under consideration, contended that it was engaged in interstate commerce. While possibly at a trial evidence that a litigant took a different position in another case would be admissible, yet in the present case I am bound to consider only what is disclosed by the record before me. That consists wholly of what the parties thereto have submitted and the action of the court thereon. It cannot properly include what an outsider seeks to bring in. It would be a complete departure from fundamental principles for a court to take into account what a stranger, even though as an *amicus curiae*, attempts to inject. Every court is "limited to determining rights of persons or of property, which are actually controverted in the particular case before

it" (*California v. San Pablo & Tulare R. Co.*, 149 U. S. 308).

It may be added that, contrary to the apparent apprehension of the *amicus curiae*, his law-suits will not be, and cannot be, in the slightest affected or impeded by any decision in the case at bar.

At the oral argument I announced my impression that the plaintiffs were entitled to an injunction. Their counsel then stated, as I understood, that they did not wish an injunction unless it were accompanied by an adjudication of the unconstitutionality of the Act.

4238

It is settled that a court should not hold a statute invalid unless it be obliged to do so. (*Blair v. United States*, 250 U. S. 273, 279. See also *Ogden v. Saunders*, 12 Wheat, 213, 270; *Sinking Fund Cases*, 99 U. S. 700, 718). So too it is settled that a court should not determine abstract questions. It should pass only on real controversies squarely put before it by the parties, as to which, in the phrase of Judge Learned Hand in *Meeker v. Baxter*, 83 Fed. (2d) 183, 187, they have "locked horns" (*Ashwarder v. Tenn. Valley Authority*, 297 U. S. 288, 324).

4239

Applying the propositions just stated, I feel that there is no occasion, or even excuse, to consider whether the Act is constitutional. Inasmuch as the plaintiffs do not come within its provisions, they are not hurt by it. In so far as they are concerned, injunction against its enforcement affords the plaintiffs all the possible protection they need. They are not entitled to any additional relief.

Moreover, from the facts set out near the beginning of this memorandum as to the inactivity and non-resistance of the five defendants, it seems plain that there is

4240

Respondents' Exhibit No. 2

actually no controversy between them and the plaintiffs as to the constitutionality of the statute. In principle at least, it seems to me that *Nashville, C. & St. L. Ry. v. Wallace*, 288 U. S. 249, sustains the conclusion I have reached and I do not read any other case relied on by the plaintiffs as being to the contrary.

4241

The result is that I am unwilling, on the present motion, to award the plaintiffs a decree containing an adjudication of the unconstitutionality of the Act, in the form of paragraph (4) of the decree proposed by them or in any other form.

Motion for an injunction granted and for a declaratory judgment denied. Settle decree, in accord with the foregoing, on two days' notice. If it be presented while I am out of the district, I consent that it be acted on by the judge then sitting in the motion part.

Dated, July 30, 1936.

FRANCIS G. CAFFEY,
United States District Judge.

4242

Respondents' Exhibit No. 3

4243

NOTICE OF MOTION BY RESPONDENT COMPANIES, WITH AFFIDAVIT, DATED MAY 17, 1937, FOR PRIOR AND SEPARATE HEARING AS TO JURISDICTION AND TO DISMISS COMPLAINT AND CHARGE FOR WANT OF JURISDICTION.

[Printed at page 19, *ante*]

Respondents' Exhibit No. 7

4244

VERIFIED ANSWER ON BEHALF OF THE RESPONDENT COMPANIES TO THE COMPLAINT OF THE BOARD AS AMENDED TO JUNE 14, 1937.

[Printed at page 42, *ante*, as a part of the pleadings]

4245

4246

Respondents' Exhibit No. 15

LETTER OF HARRY J. STRAUB TO MR. EDWARD P. PREZZANO, PRESIDENT OF THE WESTCHESTER LIGHTING COMPANY AND THE BRONX GAS AND ELECTRIC COMPANY.

THE BRONX GAS AND ELECTRIC COMPANY

43 Westchester Square
Bronx, New York City

4247 Mr. E. P. Prezzano, President
Westchester Lighting Co.
9 South First Avenue
Mount Vernon, N. Y.

Dear Mr. Prezzano:

4248 As our association as employer and employee has been terminated due to the merger of the Bronx Gas & Electric Co., into the Consolidated Edison Co., Inc. I would like to express my gratitude and thanks to the members of our former management as represented by Mr. Wilder and yourself, for the cordial and understanding manner in which you have received me as chairman of the General Council of the Employees' Representation Plan of the Bronx Gas & Electric Company in the past year. And may I congratulate the management upon their excellent choice of secretary of the management committee.

There has never been an occasion in which we have contacted Mr. Carroll, in which we did not find him to be anything but a perfect gentlemen. He has always been cordial, kind and considerate and understanding. His excellent advice has at times proven to be a valuable asset to the smooth functioning of our Council.

Respondents' Exhibit No. 15

4249

What has impressed me the most in my association with Mr. Carroll, has been his earnest endeavor to obtain an accurate picture of whatever situation we were discussing, from an employees point of view. The clear and concise manner in which he has explained the managements view point which, of course was the prime factor in enabling us to iron out employees difficulties.

It is my sincere hope that any future management contacts I may make, shall be as pleasant and cordial as those I have enjoyed with yourself, Mr. Wilder and Mr. Carroll.

4250

May I wish you continued good health, happiness and success and assure you, that from a personal viewpoint the unpleasant part of this merger is the termination of our association.

Sincerely yours,

HARRY J. STRAUB

4251

4252

Respondents' Exhibit No. 16

**MEMBERSHIP OF LOCAL UNIONS OF THE
IBEW. HAVING COLLECTIVE BARGAINING
AGREEMENTS WITH COMPANIES OF THE CON-
SOLIDATED EDISON COMPANY OF NEW YORK,
INC. GROUP OF COMPANIES.**

**MEMBERSHIP OF LOCAL UNIONS OF THE I B E W HAVING COLLECTIVE
BARGAINING AGREEMENTS WITH COMPANIES OF THE CONSOLIDATED
EDISON COMPANY OF NEW YORK, INC., GROUP OF COMPANIES**

(Data furnished to the Companies by the I B E W as of June 29, 1937)

4253

Local Union No.	Employees eligible to I B E W member- ship	Total member- ship	Per cent of eligibles	Paid-up members	Per cent of eligibles	Cards signed but dues not yet paid	Per cent of eligibles
B-825 (Brooklyn Edison Company, Inc.)	8,100	7,200	89.0	6,150	76.0	1,050	12.9
B-826 (New York Steam Corporation)	970	910	93.7	850	87.7	60	6.1
B-828 (Consolidated Telegraph and Electrical Subway Company)	1,600	1,534	96.1	1,534	96.1	0	0
4254 B-829 (Consolidated Edison Company of New York, Inc.—Electric)	13,200	8,680	65.8	6,018	45.6	2,662	20.2
B-830 (Consolidated Edison Company of New York, Inc.—Gas)	7,000	5,644	80.6	4,144	59.1	150	2.1
B-832 (Westchester Lighting Company)	3,082	2,968	96.3	2,375	77.1	593	19.2
B-839 (New York and Queens Electric Light and Power Company)	4,200	3,537	84.2	2,637	62.7	900	21.4
Totals	38,152	30,473	80.0%	23,708	62.2%	6,765	17.7%

**MEMORANDUM OF AGREEMENT BETWEEN
CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., AND THE INTERNATIONAL BROTHER-
HOOD OF ELECTRICAL WORKERS, AND ITS
LOCAL UNION No. B-830 (GAS EMPLOYEES),
DATED JUNE 15, 1937.**

Memorandum of Agreement

Between

4256

**CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.**

and the

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

Through Its

LOCAL UNION No. B830

Effective June 15th, 1937

4257

Agreement between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. (hereinafter referred to as the "Consolidated Company"), and the INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (hereinafter called the "Brotherhood"):

WITNESSETH: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as

Respondents' Exhibit No. 17

to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory, the parties hereto agree with each other as follows:

ARTICLE I**SCOPE**

1. This agreement shall apply to all employees of the Consolidated Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

ARTICLE II**No DISCRIMINATION**

2. The Consolidated Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.

ARTICLE III

HOURS AND WORKING CONDITIONS

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4262

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Consolidated Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

4263

ARTICLE IV

VACATIONS

5. Each employee who was in the employ of the Consolidated Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive

4264

Respondents' Exhibit No. 17

two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

RIDER*Correcting Article IV, Section 5*

4265

VACATIONS

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

4266

<div data-bbox="469 1012 664 1148" data-label="Text"> <p>{ G. T. P. D. W. T. J. A. F. F. G. B. }</p> </div>	<div data-bbox="695 1012 932 1082" data-label="Text"> <p>{ R. H. T. C. M. B. Jr. }</p> </div>
---	---

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Consolidated Company, in order to insure orderly operation and adequate and continuous service to the public.

ARTICLE V**WAGES AND CLASSIFICATIONS**

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall

Respondents' Exhibit No. 17

426

be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

RIDER

to Article V, Section 7

426

WAGES AND CLASSIFICATIONS.

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

426

Executed, June 15th, 1937.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By R. H. Tapscott,
President

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS

By D. W. Tracy
International President

Attest:

C. M. Breidenbach, Jr.
Assistant Secretary

LOCAL UNION No. B830
George T. Parker
Joseph A. Fisher
Frederick G. Buchner

4270

*Respondents' Exhibit No. 17***ARTICLE VI****PROVISIONS FOR SICKNESS, DISABILITY, SUPERANNUATION,
RETIREMENT, ETC.**

4271

8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

4272

ARTICLE VII**LAY-OFFS, PROMOTIONS AND DEMOTIONS**

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Consolidated Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

ARTICLE VIII

SAFETY

11. The Consolidated Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Consolidated Company in accordance with the practice now prevailing in such department.

4274

ARTICLE IX

MANAGEMENT

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Consolidated Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

4275

ARTICLE X

ADJUSTMENT AND ARBITRATION

13. Should any labor dispute or difference arise between the Consolidated Company and the Brotherhood or its members employed by the Consolidated Company, as

4276

Respondents' Exhibit No. 17

to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

FIRST: Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

4277

SECOND: Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

THIRD: Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

4278

FOURTH: Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Consolidated Company; and

FIFTH: In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Consolidated Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Consolidated Company may

ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Consolidated Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

4280

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

4281

FIRST, to attend regularly scheduled meetings of such grievance committee;

SECOND, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

THIRD, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his de-

4282

Respondents' Exhibit No. 17

partment superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

ARTICLE XI

RIGHT OF REVIEW OF DISCHARGE

4283

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

4284

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Consolidated Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

ARTICLE XII

FUTURE NEGOTIATIONS AND OUTLAWING OF
STRIKES AND LOCKOUTS

18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expira-

tion of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

4286

4287

ARTICLE XIII

DURATION OF AGREEMENT

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

Respondents' Exhibit No. 17

IN WITNESS WHEREOF, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and the BROTHERHOOD and its LOCAL UNION have executed this agreement the 15th day of June, 1937.

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.
By R. H. Tapscott,
President

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS
By D. W. Tracy
International President

Attest:
C. M. Breidenbach, Jr.
Assistant Secretary

LOCAL UNION No. B830
George T. Parker
Joseph A. Fisher
Frederick G. Buchner

PAMPHLET ENTITLED "A CALL FOR SPECIAL VOTE BY ALL EMPLOYEES OF THE NEW YORK EDISON COMPANY AND THE UNITED ELECTRIC LIGHT AND POWER COMPANY," TO BE HELD ON NOVEMBER 22, 1933, WITH COPY OF PLAN FOR COLLECTIVE BARGAINING THROUGH EMPLOYEE REPRESENTATION.

CALL FOR A SPECIAL VOTE

4292

by
ALL EMPLOYEES

of
The New York Edison Company
and
The United Electric Light and
Power Company

To be Held on Wednesday, November 22nd,
1933, between the hours of 6 A. M. and 8
P. M., in the various offices, stations and de-
partments of The Companies

4293

To enable the Employees of The
Companies to vote upon Plans
for their organization for col-
lective bargaining through rep-
resentatives of the Employees
selected by themselves by
secret ballot, etc.

November 13, 1933

*Respondents' Exhibit No. 24***CONTENTS**

	Page No.
LETTER FROM FRANK W. SMITH, President, to all Employees of The New York Edison Company and The United Electric Light and Power Company with a call for a spe- cial vote by the Employees on November 22, 1933	1-8
A PLAN for the organization of the Em- ployees of The Companies for Collective Bargaining Through Representatives Select- ed by the Employees Who Choose to Participate Therein	9-30

The New York Edison Company**The United Electric Light and
Power Company**

OFFICE OF
FRANK W. SMITH,
President.

TO THE EMPLOYEES OF THE NEW YORK EDISON
COMPANY AND THE UNITED ELECTRIC LIGHT
AND POWER COMPANY:

4298

There have come to my desk petitions signed by a majority of the 15,000 employees of these two Companies, asking, among other things, that the Companies take some steps which will enable the employees to express their views on the subject of collective bargaining through representation of the employees under Section 7(a) of the National Industrial Recovery Act, and that the Companies call some meeting or election at which a vote of the employees can be taken and a suitable plan or plans submitted for the action of the employees themselves.

4299

In order to get the matter promptly under way and to enable our employees to decide freely what they wish to do about such an organization for the representation through representatives whom they select, I have decided to comply with these requests.

Accordingly, such a special election, at which all of the employees of each Company may vote, will take place on Wednesday, No-

4300

Respondents' Exhibit No. 24

ember 22nd, 1933, between the hours of 6 A. M. and 8 P. M. The voting will be by secret ballot, and any employee may cast his ballot, between those hours, in his own department, station, bureau or location, at polling places which will be more definitely announced on the various bulletin boards of the Companies, and otherwise communicated to you, not later than Monday, November 20th, 1933.

4301

To ensure a free expression of opinion, this vote by the employees of the two Companies will be taken under the following plan and rules:

1. None of the officers of the two Companies, department and bureau heads, or other members of supervisory forces, will be present at or vote or participate in the election, or will in any way coerce, restrain or interfere with the vote to be cast by any employee.

2. The voting shall be by secret ballot, with printed ballots in uniform form, under the usual safeguards which will fully protect each employee in casting his ballot freely. Owing to the close inter-relationship of the employees in the operations of the two Companies, a single election will be held by and for the two Companies. Each employee shall be entitled to vote only in his own bureau, station or location, and shall be first identified as an employee entitled to vote therein. A poll list shall be kept of all employees voting in each bureau, station or location.

4302

3. Through this vote by our employees, there ought to be a full and free expression of opin-

Respondents' Exhibit No. 24

4303

ion by all our employees upon the following basic question:

Shall there be adopted and put in force, by and for the employees of The New York Edison Company and The United Electric Light and Power Company, a plan of organization for collective bargaining through representatives chosen by the employees?

4304

In order to get the matter before the employees in definite form, it is desirable that at this same initial vote, our employees have also an opportunity to express their opinion, through their votes, as to the adoption or non-adoption of such a plan of organization, or as to their choice between such plans as may be submitted for the consideration and vote of the employees.

To indicate to you what might be done by way of such a plan of organization, a plan has been worked out by officers of this Company, in conjunction with various employees who were familiar with the views of their associates in the different departments; and this plan will be one of those submitted for approval or disapproval by the vote of the employees at the special election. A copy of such plan is given to you, along with the notice of this election.

4305

I do not wish any employee to feel any hesitation about opposing or favoring this plan, or about proposing another one. If any fifty of our employees wish to draft and submit a dif-

Respondents' Exhibit No. 24

ferent or substitute plan for employee organization for collective bargaining, they may submit the same in writing to the Board of Tellers to be constituted for this voting, addressing such Board, Room No. 611, 4 Irving Place, New York City; not later than 12 o'clock noon on Saturday, November 18th, 1933, and such substitute plan will be immediately printed by the Board of Tellers, distributed to the employees in all departments, and placed upon the ballot impartially for the vote of the employees.

No Plan of organization for the choice of representatives by the employees will be put in force unless and until it has been approved and adopted by a majority of the employees taking part therein, by their vote through a secret ballot at an election. If a Plan is thus approved and adopted, it will become operative only as to such employees as voluntarily choose, and indicate their desire, to come in under it and be governed by it; and no employee will be prejudiced or disadvantaged because he comes in under the adopted Plan or stays out of it. The rights of each employee by virtue of Section 7(a) of the National Industrial Recovery Act will be fully preserved, under the operation of whatever Plan, if any, may be adopted by the employees.

It further would be my suggestion that if any Plan be now adopted and put in force by the employees as the result of this initial vote, such Plan should not be regarded as necessarily final, but rather as provisional and sub-

Respondents' Exhibit No. 24

4309

ject to modification, as a whole or in part, by the employees, when sufficient experience has been had to enable the employees to determine whether or not the Plan with which they have made a start could be improved. Once the first vote has taken place and a Plan has been adopted, the calling and holding of future elections and meetings, including the election of the Boards of Tellers for all future Elections, should be in all respects under the control and supervision of the participating employees, through their votes and the action of elected representatives.

4310

4. The following employees of the two Companies, in the indicated departments of the Companies, are hereby constituted a Board of Tellers, to have general charge and supervision of such initial vote and the counting and reporting of the ballots cast, subject to the provisions of this notice:

Edison

W. A. Clark, Draftsman, General Drafting Bureau,
(Mechanical Engineering Department)

W. Gillis, Operator, West 39th Street, District Sub-
station No. 2 (Operating Department)

4311

United

F. C. Caldwell, Turbine Room Engineer, Hell Gate
Generating Station, (Operating Department)

James P. Bullock, Clerk, Shops Bureau (Construc-
tion Department)

Edison

J. J. Donohue, Splicer, Bronx Distribution Bureau
(Street Department)

P. McHugh, Installer, Meter Bureau (Distribution
Engineering Department)

4312

*Respondents' Exhibit No. 24***United**

T. F. Mansfield, Clerk, Manhattan Distribution Bureau (Street Department)

J. J. Reid, Dispatcher, Operating Bureau (Distribution Engineering Department)

Edison

T. J. Wright, Instructor, Educational Bureau (Personnel Department)

T. Rooney, Non-Payment Collector, Credit and Collection Bureau (Treasurer's Department)

4313

United

T. T. Sherwood, Clerk, Statistical Bureau (Secretary's Department)

W. A. Finley, Clerk, General Accounting and Disbursements Bureau (Treasurer's Department)

Edison

T. F. Donigan, Clerk, Rate Service Bureau (Commercial Department)

I. Mark, Illuminating Engineer, Lighting Bureau (Commercial Department)

United

W. V. Smith, Adjuster, Consumers' Service Bureau (Commercial Department)

P. R. Westerkamp, District Agent, District Office (Commercial Department)

4314

Edison

Hugh Lynch, Chauffeur, Passenger Car Service Bureau (Transportation Department)

Francis G. Campbell, Clerk, Miscellaneous Supplies Division (Purchasing Department)

United

John F. Maher, Truck Chauffeur, Transmission Bureau (Street Department)

John H. Kelly, Clerk, Clerical Division (Stores Department)

Edison

Maria Cirafici, File Bureau, Bronx Division (Secretary's Department)

Respondents' Exhibit No. 24

4315

United

Evelyn M. Platner, Typist, Stenographic and Mail Bureau (Secretary's Department)

The Board of Tellers shall choose a Chairman and a Secretary, and are authorized to add to their number and/or to appoint, in their discretion, such representative inspectors of election and tellers, from among the employees (exclusive of officers, department heads, and members of supervisory forces), as in the judgment of the Board of Tellers may be needed, in and for the various bureaus, stations or locations; and to prepare and make available the forms of ballot, and to make and publish to the employees any further rules and regulations which they may deem necessary in order to ensure a fair and secret ballot and an impartial count. The results of the vote of the employees shall be promptly compiled and made public by the Board of Tellers, upon all bulletin boards in the offices and stations of the two Companies.

4316

5. The Companies will pay the cost of printing and distributing this notice, any proposed plans, and the ballots, together with any incidental expenses of holding this and any future elections; and the Companies will also arrange the time schedule of employees during the hours of balloting, so as to enable them conveniently to vote.

4317

6. The Companies do not hereby approve, endorse or favor the annexed Plan, or any other Plan, for collective bargaining through

Respondents' Exhibit No. 24

employee representation, but reserve any and all of their rights and each and every employee is likewise deemed to reserve any and all of his or her rights in respect to this matter.

7. Any further details concerning the voting on November 22nd and the arrangements therefor will be in the hands of the Board of Tellers. We hope that every employee will take part in the vote and to express freely by his vote his own views as to the matters submitted.

Very truly yours,

FRANK W. SMITH
President.

November 13, 1933.

CONTENTS OF PLAN

Article	Page No.
I. Purposes	11
II. Application	11-12
III. Qualifications for voting and for membership in Councils	12-13
IV. Organization	13-19
1. The Establishment of Councils for Employee Representation:	
(a) Bureau Council	13-14
(b) Departmental Council	14
(c) Voting in Departmental Council	15
(d) General Council	15
(e) Voting in General Council	15
(f) Departments and Bureaus (enumerated)	16-19
As to the New York Edison Company	16-17
As to The United Electric Light and Power Company	18-19
(g) Employees not in definite Bureaus	19
(h) Secretary	19
V. Selection of Employee representatives for Bureau Councils	20-22
1. Number of representatives	20
2. Representation of Divisions within a Bureau	20
3. Employees' representation	20
4. Nominations	21
5. Number of representatives to be voted for	21
6. The election	21-22

4322

4323

*Respondents' Exhibit No. 24***Contents of Plan—Continued**

Article	Page No.
VI. Method of balloting.....	22-24
1. A secret ballot	22
2. Form of ballot	22
3. Ballot-boxes, polling places and vot- ing	22-23
4. Counting of ballots	23
5. Report by Board of Tellers.....	23
6. Opening and closing of polls.....	23
7. Powers and duties of Board of Tellers	23
8. First nominations and elections under this Plan	24
VII. Terms of office	24-25
VIII. Board of Tellers.....	25-26
IX. Powers and duties of Councils.....	26-28
1. Bureau Council	26
2. Departmental Council	27
3. General Council	27
X. Meetings of Employees.....	28-29
XI. Amendment of this Plan.....	29-30
XII. Taking effect of this Plan.....	30

**PLAN FOR COLLECTIVE BARGAINING
THROUGH EMPLOYEE REPRESENTATION**

Article I

PURPOSES

This Plan is established to provide means by which Employees of The New York Edison Company and The United Electric Light and Power Company, through representatives of their own choosing, may deal collectively with the Management of the Companies, during the operation of Section 7(a) of the National Industrial Recovery Act, and have a voice through such representatives selected by the Employees, in the consideration of matters of mutual interest to Employees and the Management.

Collective bargaining under this Plan may relate to wages, hours of labor, working conditions, health, safety, education, recreation, and like matters affecting employment, together with the adjustment of grievances arising out of the relations of Employees with the Management; provided, however, that this Plan and any actions taken hereunder shall not apply to any matter which is under the regulatory power and jurisdiction of any public board or body created by statute or as to which a public duty or obligation is imposed upon the Companies by law as to public utilities.

Article II

APPLICATION

The Plan shall apply to, and shall be established in, all departments, bureaus, divisions and/or locations, of either or both Companies.

4330

Respondents' Exhibit No. 24

The Plan approved and adopted by the vote of the employees shall be available to, and shall apply to, govern and bind, all employees who voluntarily elect and choose to participate therein and become members thereunder, such choice and membership to be evidenced by the written signature of such employees to this Plan or a copy thereof, upon application by such employee to the Secretary of the Bureau Council for the bureau, division or other subdivision of the department to which such employee is assigned.

4331

Each employee shall be free to choose as to whether he will join and take part and be represented under the Plan; and its adoption and operation by and as to such employees as choose to participate therein shall be wholly without prejudice to the rights of non-participating employees.

Article III**QUALIFICATIONS FOR VOTING AND FOR MEMBERSHIP IN COUNCILS**

4332

1. All employees of the Companies who have been employed by either of the Companies for at least the thirty days last past, shall be entitled to become members and to participate under this Plan, and upon so doing, shall be entitled and permitted to vote in the selection of representatives on the Bureau Council hereinafter created and upon matters presented for decision at general meetings of the employees; provided, that those employees identified with the Management of the Companies, such as officers, department heads, bureau heads, general foremen, and the immediate supervisory assistant of any of them, shall not be permitted to be members or to vote or hold office or in any way participate under this Plan.

Respondents' Exhibit No. 24

4333

2. Any employee of the Companies who has been employed by the Company continuously during the past twelve months, shall be eligible to serve as representative on a Bureau Council.

3. Any employee elected to a Bureau Council shall be eligible to serve as Chairman of that Bureau Council and/or as representative on the Departmental Council for the department in which he is employed.

4334

4. No employee shall be required or permitted to pay any dues, membership fee, assessment, or contribution, as a condition of his becoming or remaining a member under this Plan or of participating in any election or meeting hereunder; the purpose being that this Plan shall be available to each employee who chooses to come under it, without financial obligation or payment.

5. Membership and the right to vote and participate under this Plan shall be evidenced by a card issued by the Secretary of the Bureau Council, to employees who have complied with the provisions hereof.

4335

Article IV**ORGANIZATION****1. THE ESTABLISHMENT OF COUNCILS FOR EMPLOYEE REPRESENTATION****(a) Bureau Council**

- (i) Each Bureau shall by secret ballot select a number of representatives, who shall constitute a "Bureau Council." For the purposes of this Plan, a Department which

*Respondents' Exhibit No. 24***(a) Bureau Council (continued)**

has and contains no Bureau shall be ranked at ' considered as a Bureau.

(ii) Each Bureau shall select, for its Bureau Council, one representative for each fifty employees.

(iii) In those Bureaus having less than fifty employees, one representative shall be chosen, who shall function, in Bureau matters, as the Bureau Council:

(iv) The representative selected by any Bureau having less than fifty employees shall not be as such, a member of the Departmental Council; but the General Council shall arrange and publish a method by which the representatives of such Bureaus may meet and choose a joint representative to sit in the Departmental Council, with voting powers as hereinafter provided.

(b) Departmental Council

The persons elected to serve on the Bureau Council shall select from their number a Chairman, who shall serve as presiding officer at the Bureau Council Meetings and who shall also serve as Bureau representative in a Departmental Council, which shall consist of the Bureau representatives, so chosen, from each Bureau in the Department.

(c) Voting in Departmental Council

In all voting in any Departmental Council, each member thereof shall be entitled to cast one vote for each fifty employees eligible to vote under this Plan and represented by him in such Departmental Council.

(d) General Council

(i) The individuals elected to serve on the Departmental Council shall select from their number a Chairman, who shall serve as presiding officer at the Departmental Council meetings, and who shall also serve as Departmental Representative in a General Council, which shall consist of the Departmental representatives, so chosen, from each Department in the Company.

4340

(ii) In those cases in which a Department has no Bureau, the Chairman of the Bureau Council shall serve as a member of the General Council.

4341

(e) Voting in General Council

In all voting in the General Council, each member thereof shall be entitled to cast one vote for each fifty employees eligible to vote under this Plan and represented by him in such General Council. Those members of the General Council representing less than fifty employees shall have one vote.

Respondents' Exhibit No. 24

(f) **Departments and Bureaus**

The Departments and the Bureaus thereunder, for the purposes of the initial operation of this Plan, are as follows:

AS TO THE NEW YORK EDISON COMPANY:

TREASURER

General accounting
Payroll
Paymaster
Cashier (Manhattan)
Credit and collection (Manhattan)
Consumers accounting (Manhattan)
Cashier (Bronx)
Credit and collection (Bronx)
Consumers accounting (Bronx)

SECRETARY

Information and messenger
Mail
Stenographic
File

ACCOUNTING

Disbursements
Fixed capital

RATE

PERSONNEL

Educational
Employees service
Employees advancement
Safety engineering

ENGINEER-ACCOUNTING

COMMERCIAL

Clerical
Domestic appliance promotion
District office (Manhattan)
Lighting (Manhattan)
Industrial sales (Manhattan)
District office (Bronx)
Lighting (Bronx)
Industrial sales (Bronx)
Commercial engineering
Rate service
Commercial technical
Consumers service
Special service

Respondents' Exhibit No. 24

(f) Departments and Bureaus (continued)

SYSTEM ENGINEERING

Inside plant
System planning

MECHANICAL ENGINEERING

General drafting

CIVIL ENGINEERING

Civil engineering

CONSTRUCTION

Office
Shops
Building service
Electrical construction
Mechanical construction

4346

OPERATING

East River station
Waterside stations
Test and system operation
Manhattan substations

STATISTICAL BUREAU

STREET

Manhattan distribution
Bronx distribution
Transmission
Field inspection

DISTRIBUTION ENGINEERING

Drafting
Meter
Operating
Plans and records
Plant
Service inspection
Test

4347

CLAIM

INVESTIGATION

PHOTOGRAPHIC BUREAU

PURCHASING

STORES

TRANSPORTATION

Delivery service
Motor vehicle maintenance
Passenger service

Respondents' Exhibit No. 24(f) **Departments and Bureaus (continued)****AS TO THE UNITED ELECTRIC LIGHT
AND POWER COMPANY:****CONSTRUCTION**

Building service
Electrical construction
Mechanical construction
Shops

MECHANICAL ENGINEERING**OPERATING**

Engineering
Hell Gate
Sherman Creek

COMMERCIAL

District office
Domestic appliance promotion
Industrial sales
Lighting
Commercial engineering
Commercial technical
Consumers service
Rate service
Special service

TREASURER

Cashier
Consumers accounting
Consumers meter
Credit and collection
Fixed capital
General accounting and disbursements
Paymasters

SECRETARY

Employees advancement
File
Messenger
Payroll
Safety
Statistical
Stenographic and mail

PURCHASING**STORES****TRANSPORTATION**

Delivery service
Motor vehicle maintenance
Passenger service

Respondents' Exhibit No. 24

4351

(f) Departments and Bureaus (continued)**DISTRIBUTION COORDINATION**

General service
Statistical

DISTRIBUTION ENGINEERING

Drafting
Meter
Operating
Plans and records
Plant
Service inspection
Test

STREET

Field inspection
Manhattan distribution
Transmission

4352

Should there be changes, from time to time, in the organization and/or grouping of the Departments, Bureaus, and Divisions of the Companies, such changes shall be given effect under this Plan, by the General Council, the Departmental Councils, the Bureau Councils, and the various Boards of Tellers.

(g) Employees not in definite Bureaus

As to any employees not assigned to and located in particular Bureaus, the General Council shall have the power and duty to provide a Plan under which such unassigned employees may, if they choose, become members, take part, and vote, under this Plan, and choose for themselves a Bureau Council.

4353

(h) Secretary

Each Council shall select from among its members a Secretary, who shall perform the duties usual to such office.

4354

*Respondents' Exhibit No. 24***Article: V****SELECTION OF EMPLOYEE REPRESENTATIVES FOR BUREAU COUNCILS****1. NUMBER OF REPRESENTATIVES**

The number of persons to be chosen to constitute the Bureau Council for each Bureau shall be determined by dividing the total number of employees in such Bureau by fifty. One representative shall be chosen for each fifty employees, fractions not to count. A Bureau with less than fifty employees shall in any event choose one representative to constitute its Bureau Council.

4355

2. REPRESENTATION OF DIVISIONS WITHIN A BUREAU

Where there is within a Bureau more than one Division of employees, the nomination and election of representatives to the Bureau Council and the Board of Tellers shall take account of the relative number of employees in each Division as follows: Each Division in such Bureau shall be entitled to have as many representatives, out of the total number to be chosen, as the number of the employees eligible to vote in such Division bears to the total number of eligible employees in such Bureau, as the same may be determined by the Board of Tellers. The ballots for the nominations and elections in such Bureau shall be arranged by the Board of Tellers so as to give effect to the foregoing, and the nominations and elections shall be made accordingly.

4356

3. EMPLOYEES' REPRESENTATION

Subject to the provisions of the preceding paragraph, each employee in a Bureau who is eligible to participate hereunder shall be permitted and requested to nominate as many persons to represent him and other participating employees on the Bureau Council as it has been determined shall constitute the Bureau Council.

4. NOMINATIONS

From the results of the nominating ballot, a list shall be prepared showing names of the persons nominated in accordance with the provisions of Paragraph 2 of this Article and the number of nominating votes received by each person. From this list, there shall be selected, by the Board of Tellers, in the order of number of votes received by those persons receiving the most votes, such a number of persons as will conform to the requirements of Paragraph 2 hereof and will not exceed twice the number of individuals to be selected to serve on the Bureau Council. For example, if it has been determined that the Bureau Council shall consist of ten representatives, and twenty-five persons have been voted for on the nominating ballot, the first twenty persons on the list from the nominating votes (which has been prepared in the order of number of nominating votes received) shall be considered as having been nominated for the election.

4358

5. NUMBER OF REPRESENTATIVES TO BE VOTED FOR

Upon such completion of the nominating ballot and the publication of the results, each employee eligible to vote hereunder shall be permitted and requested to vote for as many persons among the nominees as it has been determined shall be elected to serve on the Bureau Council.

4359

6. THE ELECTION

From the results of this ballot, a list shall be prepared by the Board of Tellers showing the number of votes received by each person. From this list, there shall be selected (in the order of number of votes received) those persons receiving the most votes, the

Respondents' Exhibit No. 24

number of persons so chosen to equal the number of persons to be elected to serve on the Bureau Council.

Article VI**METHOD OF BALLOTING****1. A SECRET BALLOT**

All balloting under this Plan shall be secret, and shall be arranged and supervised by a Board of Tellers, who shall be chosen as provided hereinafter.

2. FORM OF BALLOT

A ballot form, appropriately arranged (printed or otherwise), shall be provided for each employee eligible to vote hereunder. This ballot shall not be signed or ear-marked in any manner which might result in the identification of the employee using it.

3. BALLOT-BOXES, POLLING PLACES AND VOTING

One or more ballot-boxes shall be provided in each Bureau, Division, or at locations, as determined by the Board of Tellers. Each employee shall be permitted to vote only in the Bureau in which he is employed, and upon being identified by the Board of Tellers or its representatives as an employee entitled to vote therein. Facilities shall be provided so that each such employee may receive a blank ballot, mark it as he or she desires, and place it in the ballot-box, all without coercion, interference or influence of any kind or from any source. Each ballot-box shall be sealed, and shall be so constructed that each ballot can readily be deposited in the box but cannot be removed without breaking the seal. The

Respondents' Exhibit No. 24

4363

sealed ballot-box shall not be opened nor the seal broken until the appointed time has arrived for closing the ballot and commencing the counting of the votes under the supervision of the Board of Tellers.

4. COUNTING OF BALLOTS

In the nominating ballot, all votes shall be counted and tabulated. In the election ballot, whereby the representatives are chosen from the list of nominees, votes for persons not listed among the nominees, shall not be counted and shall be declared "void." Other votes, on the same ballot form, shall be counted if they are for persons duly nominated as hereinabove provided.

4364

5. REPORT BY BOARD OF TELLERS

Upon completion of the counting of votes, the Board of Tellers shall prepare and post publicly a detailed report showing the results of the elections.

6. OPENING AND CLOSING OF FOLLS

The Board of Tellers shall fix and announce the time for opening and closing the balloting, shall determine a suitable method of informing all employees in a Bureau or Division of the date, time, place, etc., of such balloting, and shall cause such announcement to be suitably published.

4365

7. POWERS AND DUTIES OF BOARD OF TELLERS

As to the conduct and supervision of nominations, elections, and the counting of all ballots, under this Plan, the Board of Tellers shall have, and may exercise, such powers and duties, not inconsistent with the provisions of this Plan, as they may deem necessary or proper for the carrying out of the purposes hereof.

Respondents' Exhibit No. 24

8. FIRST NOMINATIONS AND ELECTIONS UNDER THIS PLAN

The first nominations and elections for members of the Bureau Councils under this Plan shall be held within three weeks from and after the date of the approval and adoption of this Plan by the employees. Subsequent nominations and elections shall be held in each year, at times to be fixed and announced by the Board of Tellers, so that the annual elections of members of the Bureau Councils shall be held during the second week of the month of November, in each year.

Article VII

TERMS OF OFFICE

1. The Members of the Bureau, Departmental and General Councils shall serve for one year, commencing December first and ending November thirtieth, provided, that each member of a Council shall serve until his successor shall have been duly elected and qualified; and provided further, that the members of the Councils first chosen under this Plan shall serve only until the election and qualification of their successors, at the next annual election.

2. In the event that a representative on a Bureau Council is incapacitated because of death, leaving the employment, transfer from such Bureau or promotion to a supervisory position, the vacancy shall be filled by vote of the remaining members of the Bureau Council.

3. In the event that a representative on a Departmental Council or General Council shall be incapacitated because of death, leaving the employment, transfer from the Depart-

Respondents' Exhibit No. 24

ment, or promotion to a supervisory position, the vacancy shall be filled by vote of the Bureau or Departmental Council, of which he has been Chairman.

4. Representatives so chosen to fill vacancies in any Council, shall serve until their successors have been duly elected and qualified, as hereinabove provided.

4370

Article VIII**BOARD OF TELLERS**

1. In each Bureau with fifty or more employees, the Board of Tellers therefor shall consist of three employees of that Bureau, who are members under this Plan, and are nominated and elected with reference to any Division within a Bureau, as provided in Paragraph 2 of Article V hereof. The three such employees receiving the highest number of votes therefor shall be deemed elected to serve as such Board of Tellers.

2. The election of members of the Board of Tellers to serve until and for the ensuing election shall be conducted by secret ballot, at each election. Each Bureau employee participating under this Plan shall be entitled to vote for three persons as such Board of Tellers. Nominations shall first be made in the manner provided as to members of the Bureau Council.

4371

3. The Board of Tellers in each Bureau shall elect from their number one who shall serve as Chairman and one from their number who shall serve as Secretary.

4. The ballots cast and the tally sheets at any election shall be preserved by the General

4372

Respondents' Exhibit No. 24

Council for at least one year following such election.

5. All communications and matters that may be issued by any Council or any Board of Tellers to the participating employees, pertaining to the operation of the Plan and/or nominations or elections thereunder, shall be sent to such employees at their home addresses as listed under this Plan. All elections, meetings and proceedings under this Plan shall be so conducted, so far as practicable, as to involve a minimum of interruption and interference with the work of employees during normal working hours, except that time shall be allowed to employees for balloting and the conduct of elections.

4373

Article IX**POWERS AND DUTIES OF COUNCILS****1. BUREAU COUNCIL**

(a) To consider, study, investigate and discuss matters pertaining to relations between the Management and the employees participating under this Plan, such as adjustment of wages, hours, working conditions, overtime, vacations, and other matters within the stated purposes of this Plan.

(b) To consider, negotiate and agree upon, with the Management, such changes in these matters as in their opinion are necessary or desirable. The Bureau Council shall have exclusive authority to negotiate and agree upon any such matters specifically relating to its Bureau. Matters which fall outside the scope of the Bureau shall be referred to the Departmental Council or to the General Council.

4374

Respondents' Exhibit No. 24

4375

2. DEPARTMENTAL COUNCIL

(a) To consider, negotiate and agree upon such matters as may be referred to it by any Bureau Council, or as may arise elsewhere and are beyond the Bureau scope and within the Departmental scope.

3. GENERAL COUNCIL

(a) To consider, negotiate and agree upon such matters as may be referred to it by any Departmental Council, or which may arise elsewhere and which are obviously beyond the Departmental scope.

4376

(b) The Chairman of the General Council shall preside at all meetings of employees hereunder, and shall be *ex officio* the chief executive under this Plan; and through him the General Council shall exercise general supervision of the administration of the Plan, and shall determine any disputed questions concerning the conduct of elections hereunder, if referred to the General Council by the Board of Tellers of any Bureau.

4. A majority of the members of a Council and of the votes which members are entitled to cast in such Council, shall constitute a quorum for any meeting of any Council.

4377

5. The decision of a Bureau, Departmental or General Council may be overruled only by a contrary vote of a majority of all participating employees of the Bureau, Department, or Company, as the case may be. Such appeal from the rulings of a Council shall necessitate the calling of a meeting of all the participating employees of that Bureau or Department or of the Companies, as hereinafter provided.

4378

Respondents' Exhibit No. 24

6. The Bureau, Departmental, and General Councils shall confer and negotiate directly with the Management as occasion may from time to time arise. Any employee participating under this Plan may complain to the appropriate Council as to any matter within its jurisdiction under this Plan.
7. Collective bargaining with the Management under this Plan shall be subject to the provisions of any Code approved and adopted by Federal authority as to the Companies, as to minimum wages, maximum hours, working conditions, and the like.
8. The reasonable and necessary expenses of all elections and meetings under this Plan shall be transmitted to the Chairman of the General Council, and by him certified to the Management for payment.

Article X**MEETINGS OF EMPLOYEES**

1. A meeting of all of the participating employees of the Companies may be called by the General Council if it deems such meeting desirable.

2. A meeting of all of the participating employees of the Companies shall be called by the General Council upon presentation to the General Council of a petition requesting that the meeting be called. This petition shall state fully the business to be brought before the meeting and shall be signed by at least fifty active employees participating under this Plan.

3. A meeting of all of the participating employees of a Department may be called by the Departmental Council.

4380

Respondents' Exhibit No. 24

4381

4. A meeting of all of the participating employees of a Department shall be called by the Departmental Council, upon presentation to the Departmental Council of a petition requesting that the meeting be called. The petition shall state fully the business to be brought before the meeting, and shall be signed by at least five per cent. of the total membership of the participating employees in the Department.

5. A meeting of all of the participating employees of a Bureau may be called by the Bureau Council.

4382

6. A meeting of all of the participating employees of a Bureau shall be called by the Bureau Council upon presentation to the Bureau Council of a petition requesting that the meeting be called. The petition shall state fully the business to be brought before the meeting, and shall be signed by at least five per cent. of the total membership of the participating employees in the Bureau.

7. All voting, at these meetings of all participating employees of a Bureau or Department or of the Companies, shall be by open ballot unless a secret ballot is requested. The request for a secret ballot shall be presented as a motion, which must be seconded and passed by a majority of those present. The vote on this motion shall be taken by show of hands.

4383

Article XI**AMENDMENT OF THIS PLAN**

This Plan or any part thereof may be at any time amended by a majority vote of all of the employees participating hereunder, at any an-

4384

Respondents' Exhibit No. 24

4385

nual election under this Plan. Any proposal for amendment of this Plan, to be voted on at such election, must have been filed in writing with the General Council, at least six weeks before such election, and over the signatures of not less than one hundred employees who are participating under this Plan. The General Council and the various Boards of Tellers shall cause such proposed amendment, with the names of the proposers, to be printed, posted on bulletin boards, and distributed to the participating members hereunder, not less than thirty days before such annual election.

Article XII**TAKING EFFECT OF THIS PLAN**

4386

1. This Plan shall be deemed to have been approved and adopted by the employees, and to take effect, if it receives the affirmative vote of a majority of all the employees taking part in the special election called to vote hereupon. If so adopted, this Plan shall be known as "The Employees' Plan for Collective Bargaining Through Employee Representation."

2. This Plan shall, upon and after such approval and adoption, be deemed to be operative and in effect as to such employees of either Company as shall thereafter subscribe his name to this Plan, as evidence of his desire to become a member and to participate hereunder. Any employee who shall have become a member by subscribing to this Plan shall cease to be a member upon ceasing to be an employee of either Company, and may voluntarily cease to be a member participating hereunder, upon giving thirty days' notice of such intention in writing, to his Bureau Council.

Respondents' Exhibit No. 25**LETTER DATED JUNE 28, 1937, TO THE BOARD
FROM COUNSEL FOR THE RESPONDENTS**

WHITMAN, RANSOM, COULSON & GOETZ
40 WALL STREET, NEW YORK.

CHARLES S. WHITMAN
WILLIAM L. RANSOM
ROBERT E. COULSON
JACOB H. GOETZ
COLLEY E. WILLIAMS
WILLIAM G. CHAMBERS
RICHARD JOYCE SMITH

June 28, 1937.

4388

*Re Complaint of Regional Director for Second Region
of National Labor Relations Board v. Consolidated
Edison Company of New York, Inc., et al. (Case
No: II. C-224)*

National Labor Relations Board,
Washington, D. C.

Gentlemen:

By permission of the Trial Examiner in this proceeding (Mr. Robert Gates), we write to place before you its present status.

4389

The hearings were begun on June 3rd. Testimony in behalf of the Board was concluded on Thursday, June 24th. This termination was unexpected by the respondents and their counsel; a considerable number of witnesses whose attendance had been subpoenaed or asked, were not called to the stand. The proceeding involves, as we understand it:

- (1) The question of the jurisdiction of the National Labor Relations Board over these local public utility operating Companies and the matters com-

4390

Respondents' Exhibit No. 25

plained of, as against the New York State Labor Relations Board (Laws of 1937, Chapter 443);

- (2) The laying off or discharge of six employees, allegedly for activities in labor organizations;
- (3) Alleged coercion of some employees into joining the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor; many more than a majority of the employees of each respondent having joined a Local Union of the International Brotherhood of Electrical Workers, and each of the respondents having entered into and executed a labor agreement with the appropriate Local Union of the International Brotherhood of Electrical Workers; and
- (4) Alleged "domination" and financial aid and support of the International Brotherhood of Electrical Workers or some of its Local Unions, by the respondents or some of them.

4391

When the testimony in support of the complaint unexpectedly ended, trial counsel for the respondents asked the Trial Examiner, upon the record, for an adjournment of the hearings until July 6th, to enable the adequate preparation and presentation of the respondents' case. This was urged as warranted, not only by the public importance of the jurisdictional question, the considerable size of the stenographic record (1301 pages), and the fact that many days of hearings had been obviated by time-saving cooperation between Regional Counsel for the Board and trial counsel for the respondents, but also in view of the situation of the respondents as to necessary witnesses.

4392

Mr. Floyd L. Carlisle, Chairman of the Board of the Consolidated Edison Company of New York, Inc., who

Respondents' Exhibit No. 25

4393

had been in charge of the labor negotiations and policies of the respondents, and whose statements to the employees had been referred to by practically every witness called by the Government, was and is in Europe, due to return to the United States on July 5th. Mr. Carlisle had not gone to France on a vacation or holiday, but to attend a meeting of the Executive Committee of the World Power Conference, of which he is a member, along with Mr. O. C. Merrill, Secretary of the Federal Power Commission, who is also secretary, we believe, of the World Power Conference. In 1936, the World Power Conference met in Washington, upon the invitation of the United States Government; and Mr. Carlisle and the respondents cooperated in the meeting and the entertainment of the delegates to the Conference from other lands. At the time Mr. Carlisle sailed, there seemed to be no prospect that the pending case would be concluded before his return.

4394

Furthermore, Mr. Harold Dean, vice-president of the Respondent New York and Queens Electric Light and Power Company and in charge of its engineering department, was in Milwaukee, Wisconsin, last week, to attend the annual meeting of the American Institute of Electrical Engineers, with which he is identified. Mr. Dean was and is the necessary witness for the respondent New York and Queens Electric Light and Power Company, as to the alleged discharge of five of the six employees alleged to have been let out for labor activities, in 1935 and early 1936. Mr. Dean's presence in New York could not possibly have been secured last Thursday or Friday. At the time he left for Milwaukee, counsel for the respondents had no reason whatever to anticipate that the case would be concluded before his return, as proved to be the case. His testimony was and is indispensable to the respondents' case.

4395

4396.

Respondents' Exhibit No. 25

After telephonic consultation with representatives of your Board in Washington, the Trial Examiner reported that he could not grant an adjournment for receiving the testimony of any witness except Mr. Carlisle. He recessed the hearing until July 6th for that sole purpose. He reserved decision until July 6th on the question whether or not the testimony of Mr. Dean or any other witnesses (beside Mr. Carlisle) would be taken on July 6th or any other adjourned date. The Trial Examiner granted permission to respondents' counsel to present the matter meanwhile to your Board.

4397

As the matter stands, the respondents may be denied all opportunity to present testimony in relation to the six alleged discharges of employees, as well as other pertinent matters in rebuttal, and will be limited to the testimony of Mr. Carlisle, who cannot testify upon the factual matters to be covered by Mr. Dean and others.

We respectfully submit that the situation does not warrant such a precluding of the respondents from a fair and full opportunity to present their case, in rebuttal to that presented by the Board in 1301 pages of testimony. Particularly is that so, in view of the fact that the question whether your Board has jurisdiction in the premises is as yet wholly undetermined. The respondents and their counsel have cooperated fully in the development and presentation of facts which may be pertinent to your Board's final decision. The respondents' opportunity to present their case ought not to be denied.

4398

Very truly yours,

WHITMAN, RANSOM, COULSON &
GOETZ

Attorneys for the respondents

1467

Respondents' Exhibit No. 25(a)

4399

REPLY, DATED JULY 2, 1937, OF THE BOARD
TO THE LETTER OF JUNE 28, 1937 (RESPON-
DENTS' EXHIBIT No. 25).

NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

July 2, 1937

J. WARREN MADDEN

Chairman

4400

EDWIN S. SMITH

DONALD WAKEFIELD SMITH

Whitman, Ransom, Coulson & Goetz
40 Wall Street
New York, N. Y.

Re: Consolidated Edison Co.
Case No. II-C-224

Gentlemen:

We acknowledge receipt of your letter of June 28 re-
questing permission to introduce testimony in addition
to that to be given by Mr. Carlisle on July 6. The Board
has considered your request, and directed me to inform
you that it will permit Mr. Harold Dean to testify on
July 6, as well as Mr. Carlisle, but that these are the
only two witnesses who will be permitted to testify on
your behalf at that time. The Board is of the opinion
that any other witnesses whom you may have desired to
produce should have been produced upon completion of
the Board's case.

4401

Very truly yours,

(signed) BENEDICT WOLF

BENEDICT WOLF,

Secretary

4402

Stipulation as to Printing of Exhibits

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT

4403 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and its affiliated Companies, BROOKLYN EDISON COMPANY, INC., NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY, WESTCHESTER LIGHTING COMPANY, THE YONKERS ELECTRIC LIGHT AND POWER COMPANY, NEW YORK STEAM CORPORATION, CONSOLIDATED TELEGRAPH AND ELECTRICAL SUBWAY COMPANY,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

October
Term,
1937

STIPULATION

4404

It is hereby stipulated and agreed by and between the attorneys for the above-named parties that in printing the record in the above case none of the exhibits introduced at the hearing before the Board shall be printed except as follows:

1. Documents included in Board's Exhibit 1, as follows: Charge, Complaint and Notice of Hearing, Acknowledgments of Service, Amended Notice of Hearing and Affidavit of Service of Amended Notice of Hearing.

2. Board's Exhibits 2, 4, 5, 10, 12, 13a, 13b, 14 and 15.

Stipulation as to Printing of Exhibits

4405

3. Petitioners' (Respondents' in the proceeding before the Board) Exhibits 2, 3, 7, and 15.

It is further stipulated and agreed that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

Dated at Washington, D. C. this 7th day of December, 1937. 4406

CHARLES FAHY

CHARLES FAHY, *General Counsel,*
National Labor Relations Board,
Washington, D. C.

Dated at New York City, this 8th day of December, 1937.

WHITMAN, RANSOM, COULSON &
GOETZ

WHITMAN, RANSOM, COULSON & GOETZ,
Attorneys for Petitioners, 4407
New York City.

4408

Order as to Printing of Exhibits

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

4409

CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., and its affiliated Companies,
BROOKLYN EDISON COMPANY, INC., NEW
YORK AND QUEENS ELECTRIC LIGHT AND
POWER COMPANY, WESTCHESTER LIGHT-
ING COMPANY, THE YONKERS ELECTRIC
LIGHT AND POWER COMPANY, NEW YORK
STEAM CORPORATION, CONSOLIDATED TEL-
EGRAPH AND ELECTRICAL SUBWAY COM-
PANY,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

October
Term,
1937

4410

ORDER

Upon stipulation of the parties, and due considera-
tion having been given, it is

ORDERED that in printing the record in the above case
none of the exhibits introduced at the hearing before
the board shall be printed except as follows:

1. Documents included in Board's Exhibit 1, as fol-
lows: Charge; Complaint and Notice of Hearing,
Acknowledgments of Service, Amended Notice of
Hearing and Affidavit of Service of Amended
Notice of Hearing.

Order as to Printing of Exhibits

4411

2. Board's Exhibits 2, 4, 5, 10, 12, 13a, 13b, 14, and 15.
3. Petitioners' (Respondents' in the proceeding before the Board) Exhibits 2, 3, 7, and 15.

AND IT IS FURTHER ORDERED that those exhibits not printed shall be deemed part of the record before the Court and may be considered by the Court and referred to by the parties; and that either party shall have the right to have any of said exhibits printed and included in the printed record in the event that appeal is later taken.

4412

Dated: New York City, December 9th, 1937.

For the Court

MANTON

United States Circuit Judge.

4413

CLERK'S COPY.

Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 19

**CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC., AND ITS AFFILIATED COMPANIES, ET AL.,
PETITIONERS.**

US.

NATIONAL LABOR RELATIONS BOARD ET AL.

No. 25

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. B-825, ET AL., PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED { **APRIL 2, 1938.**
 { **APRIL 12, 1938.**

CERTIORARI GRANTED MAY 16, 1938.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No.

CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC., BROOKLYN EDISON COMPANY, INC., ET AL.,
PETITIONERS,

vs.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

VOL. IV

INDEX

Page

Proceedings in U. S. C. C. A., Second Circuit.....	1473
Petition of Edison Co. et al. for review of final order of Board.....	1473
Petition of Unions for review of final order of Board.....	1554
Answer of Board to petition of Edison Co. et al. for review, and request for enforcement of order of Board.....	1691
Answer of Board to petition of Unions for review, and request for enforcement of order of Board.....	1711
Reply of Edison Co. et al. to Board's answer and request for enforcement of its order.....	1726
Reply of Unions to Board's request for enforcement of its order.....	1734
Petition for leave to intervene.....	1735
Stipulation and order re consolidation.....	1736
Order granting leave to intervene.....	1737
Opinion, Swan, J.....	1737
Judgment.....	1748
Clerk's certificate..... (omitted in printing)	

Judd & Detweiler (Inc.), Printers, Washington, D. C., March 22, 1938.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and
Its Affiliated Companies, Brooklyn Edison Company,
Inc., New York and Queens Electric Light and Power
Company, Westchester Lighting Company, The Yonkers
Electric Light and Power Company, New York Steam
Corporation, Consolidated Telegraph and Electrical Sub-
way Company, Petitioners,

against

NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION FOR REVIEW—Filed November 18, 1937

To the Honorable the Judges of the United States Circuit
Court of Appeals for the Second Circuit:

The petition of the above-named Companies, pursuant to
Section 10(f) and related Sections of the National Labor
Relations Act, respectfully shows, upon information and
belief, as follows:

1. The petitioners Consolidated Edison Company of New
York, Inc., Brooklyn Edison Company, Inc., and New York
and Queens Electric Light and Power Company, are operat-
ing public utility corporations, organized and existing under
special or general laws of the State of New York, and are
engaged in the local business of supplying electric service to
consumers situated within the Boroughs of Manhattan,
The Bronx, and Brooklyn, and part of the Borough of
Queens, within the City of New York. The petitioner Con-
solidated Edison Company of New York, Inc., is engaged
also in the local business of supplying gas service to con-
sumers situated in the Boroughs of Manhattan, The Bronx,
and part of the Borough of Queens (Long Island City and
the Third Ward—Flushing, etc.), within the City of New
York. The petitioner Consolidated Edison Company of
New York, Inc., conducts the electric business formerly con-

ducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by the Bronx Gas and Electric Company, merged into the Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of the Consolidated Gas Company of New York and that formerly conducted by various gas Companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged into the Consolidated Edison Company of New York, Inc., in 1936. Whenever in this petition facts or figures are given as to the Consolidated Edison Company of New York, Inc., the same include, unless otherwise indicated, the pertinent facts and figures as to such predecessor Companies within the period stated to be covered. None of the petitioners supplies any kind of service in the Borough of Richmond or in the Fifth Ward of the Borough of Queens (the Rockaway region); and none of the petitioners supplies gas service in the Borough of Brooklyn or in any part of the Borough of Queens except Long Island City and the Third Ward (Flushing, etc.).

2. The petitioner New York Steam Corporation is an operating public utility corporation, organized and existing under the laws of the State of New York, and is engaged in the local business of supplying steam service to consumers situated within a part of the Borough of Manhattan. The petitioner Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York, and is engaged in constructing, maintaining and operating, under contracts with the City of New York, underground ducts or conduits for electrical conductors, within the Boroughs of Manhattan and The Bronx, New York City, but does not supply electric, gas or steam service to any consumers.

3. The petitioner Westchester Lighting Company is an operating public utility corporation, organized and existing under the laws of the State of New York, and is engaged in the local business of supplying electric service to consumers situated in the major part (all except the City of Yonkers and the Towns of Somers, North Salem, Lewisboro and Poundridge) of the County of Westchester, State of New York; and the petitioner Westchester Lighting Company supplies also gas service to consumers situated

in such major part of the County of Westchester as receives gas service. The petitioner Westchester Lighting Company also supplies electric service to consumers situated within a small area in the Borough of The Bronx, in the City of New York, adjacent to Westchester County and formerly a part of that County. The petitioner The Yonkers Electric Light and Power Company is an operating public utility corporation, organized and existing under the laws of the State of New York, and is engaged in the local business of supplying electric service to consumers situated in the City of Yonkers, Westchester County.

Corporate Organization and Local Franchises

4. Each of the petitioners (except the Consolidated Telegraph and Electrical Subway Company) is a corporation organized and existing under general or special laws of the State of New York for the purpose, and is subject to the public duty, of supplying electric, gas or steam service, to local consumers situated within their respective franchise territories as above stated. In addition to the general corporate powers of the petitioners, they possess, and conduct their operations by virtue of, various local franchises to lay, maintain and operate mains, pipes, wires or other conductors for conducting gas, electricity or steam, in, on, over, under and through the streets, avenues and other public places within the City of New York and in various cities, villages and towns in Westchester County, subject to the terms of such local franchises and to such reasonable regulations as the local municipal authorities may prescribe. These franchises were granted in some instances by special legislative Acts of the State of New York, and in other instances by consents of the local municipal authorities in the State of New York.

5. Excepting the petitioner Consolidated Telegraph and Electrical Subway Company, each of the petitioners is "a public utility company" as defined in Section 2, subdivision 22, of the Public Service Law of the State of New York, and is subject to the jurisdiction and regulatory powers of the Public Service Commission of the State of New York as to its operations, properties, rates, revenues, expenditures, accounts, and other respects provided by law. The public obligation of such petitioners is to render adequate and continuous service, at rates limited by such regulation, to

consumers situated in their respective territories in the City of New York and Westchester County. The petitioner Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York. Although affiliated with the Consolidated Edison Company of New York, Inc., through the latter's ownership of its stock, it is not a public utility, within the meaning of the Public Service Law of the State of New York, and does not produce or supply electricity, gas or steam, or sell any product to anybody. Under a contract dated April 7, 1887, modifying a prior contract dated July 22, 1886, with the Commissioners of Electrical Subways for the City of New York, ratified and confirmed by and subject to express legislative enactment (Chapter 716, Laws 1887), as modified by a contract dated May 15, 1891, authorized by Chapter 231, Laws 1891, the Consolidated Telegraph and Electrical Subway Company provides, constructs, equips, maintains and operates subways, ducts, and conduits for the reception of electrical conductors (other than telegraph and telephone conductors) in the Boroughs of Manhattan and The Bronx, City of New York, within which its operations are wholly conducted. The Consolidated Edison Company of New York, Inc., and the Westchester Lighting Company, occupy space in such ducts and pay rent for the space so occupied.

Principal and Branch Offices of Petitioners

6. The principal office of the petitioner Consolidated Edison Company of New York, Inc., is at No. 4 Irving Place, Borough of Manhattan, New York City. Branch offices are maintained and operated by the Company at various locations within the Boroughs of Manhattan, The Bronx, and Queens, within New York City.

7. The principal office of the petitioner Brooklyn Edison Company, Inc., is at No. 380 Pearl Street, Borough of Brooklyn, New York City. Branch commercial offices are maintained and operated by the Company at various locations within the Borough of Brooklyn, New York City.

8. The principal office of the petitioner New York and Queens Electric Light and Power Company is at No. 28-19 Bridge Plaza North, in Long Island City, Borough of Queens, New York City. Branch commercial offices are maintained

and operated by the Company at various locations within the Borough of Queens, New York City.

9. The principal office of the petitioner Westchester Lighting Company and the petitioner The Yonkers Electric Light and Power Company is at No. 9 South First Avenue, in the City of Mt. Vernon, in Westchester County, in the State of New York. A branch commercial office is maintained by these Companies in the City of Yonkers, in Westchester County, State of New York. Branch commercial offices are maintained by the petitioner Westchester Lighting Company at the various locations in Westchester County, State of New York.

10. The principal office of the petitioner New York Steam Corporation is at No. 130 East 15th Street, Borough of Manhattan, New York City.

11. The principal office of the petitioner Consolidated Telegraph and Electrical Subway Company is at No. 54 Lafayette Street, Borough of Manhattan, New York City.

Location of Electric Generating Stations, Sub-stations, Gas Plants and Other Properties and Operations of Petitioners

12. The electric generating stations, electric sub-stations, gas manufacturing stations, gas holder-stations, steam generating plants, service buildings, store-rooms, garages, and other buildings and properties, of the several petitioners, are located wholly within the City of New York or in Westchester County.

13. All transmission and distribution facilities and equipment and all other property owned by the petitioners and used in their electric, gas or steam business are located and used by the petitioners within the City of New York or the County of Westchester. All meters in use by any of the petitioners are located, and are read, on the premises of consumers, situated within the City of New York or the County of Westchester; and the preparation and sending of bills to consumers take place within the City of New York or the County of Westchester. All metering apparatus and equipment furnished by the petitioners are located on premises of customers within the City of New York or the County of Westchester. All deliveries of electricity, gas

or steam by the petitioners are made within the City of New York or the County of Westchester. None of the petitioners undertakes, or has any contract or agreement, to supply, deliver or transmit electric energy at any location outside of the State of New York, or to supply or deliver electric energy for resale by customers outside of the State of New York. None of the petitioners has any interconnection with any public utility company operating outside the State of New York.

Regulatory Requirements of the State of New York

14. Under the Public Service Law of the State of New York (Sec. 66, subdivision 12), the Public Service Commission is empowered to require electric corporations and gas corporation subject to its jurisdiction to file, print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used, and all general privileges and facilities granted or allowed by such electric corporations or gas corporations; and the Public Service Commission has by Order and regulations required the petitioners which are subject to its jurisdiction to file with the Commission Rate Schedules embodying Service Classifications and rates, terms, and forms of contracts applicable thereto, for all general consumers, and to file with the Commission copies of special contracts with such consumers of the petitioners as are public utilities, from which requirements are excepted rates and contracts with Federal, State and municipal authorities. The petitioners subject to the jurisdiction of the Public Service Commission have accordingly filed and printed, and have kept and do keep open to public inspection, such Rate Schedules applicable to service to general consumers and have also filed copies of special contracts made with public utilities. Under the Public Service Law of the State of New York, the Public Service Commission has also empowered each petitioner (other than the Consolidated Telegraph and Electrical Subway Company) to give safe and adequate service to local consumers, to control any transfer of their franchises and property, to regulate the issuance of their securities and to regulate their accounts and operations in respects provided by the State law.

Locality and Classes of Electric and Gas Consumers

15. The consumers of the electric service supplied by the petitioners, as of December, 1936, numbered about 2,324,800, of whom about 2,160,300 are located in New York City and 164,500 are located in Westchester County. Wherever in this petition, figures are given as to the number of consumers of the service of any of the petitioners, such number of consumers is based upon the number of bills rendered for such service in the month of December, 1936. By classifications the electric consumers of the petitioners in New York City are:

Type of service	Number of consumers	Per cent of consumers
Residential	1,763,318	81.63
General uses, including commercial	366,549	16.97
Religious purposes	3,985	0.18
Wholesale and other uses	23,328	1.08
Flat rate—general consumers	2,821	0.13
Railroads	16	.....
Municipal street lighting	6	.....
Miscellaneous governmental uses	268	0.01
Total	2,160,291	100.00

By classifications, the electric consumers of the petitioners in Westchester County, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
Residential	133,516	81.14
General uses, including commercial	23,173	14.08
Religious purposes	815	0.50
Wholesale and other uses	6,382	3.88
Flat rate—general consumers	53	0.03
Railroads	6	.....
Municipal street lighting	160	0.10
Miscellaneous governmental uses	440	0.27
Total	164,545	100.00

By classifications, the gas consumers, served by the petitioner Consolidated Edison Company of New York, Inc., in New York City, as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	1,025,495	99.16
Wholesale service	5,579	0.54
Heating service and other service	3,121	0.30
Prepayment meter sales	30	.....
Total	1,034,225	100.00

By classifications, the gas consumers served by the petitioner Westchester Lighting Company (in Westchester County), as of December, 1936, were:

Type of service	Number of consumers	Per cent of consumers
General uses, principally residential	128,575	97.79
Wholesale service	149	0.11
Heating service and other service	2,764	2.10
Prepayment meter sales	2	.....
Total	131,490	100.00

The consumers of the petitioner New York Steam Corporation are all situated in parts of the Borough of Manhattan, New York City. The petitioner Consolidated Telegraph and Electrical Subway Company has no consumers of service, but performs contractual obligations with the City of New York, within the Borough of Manhattan and a part of the Borough of The Bronx, New York City.

Employees of the Petitioners

16. For the carrying on of their business within the City of New York and Westchester County, the petitioners have a large number of employees. As of April 17, 1937, the number of employees of the petitioners was, by Companies:

	Number of Employees		
	Weekly	Monthly	Total
Consolidated Edison Company of New York, Inc.	22,227	1,328	23,555
Brooklyn Edison Company, Inc.	7,855	431	8,286
New York and Queens Electric Light and Power Company	4,092	203	4,295
Westchester Lighting Company	2,701	128	2,829

Type of service	Number of consumers	Per cent of consumers	
The Yonkers Electric Light and Power Company	384	34	418
New York Steam Corporation	999	71	1,070
Consolidated Telegraph and Electrical Subway Company	1,618	30	1,648
Total employees	39,876	2,225	42,101

By principal classifications or types of work, the number of employees of the petitioners was:

Classification	Number of Employees		
	Weekly	Monthly	Total
Outside field employees	11,020	263	11,283
Electric generating stations, substations and gas plant employees (exclusive of clerical and office employees at stations)	7,470	445	7,915
Clerical and office employees including meter readers and collectors	21,386	1,517	22,903
Total employees	39,876	2,225	42,101

The employees above indicated as at stations of the petitioners may be further indicated as follows (exclusive of station construction and shop employees):

	Number of Employees		
	Weekly	Monthly	Total
Electric stations	3,700	268	3,968
Gas plants and holder stations	1,897	60	1,957
Steam stations	408	15	423
Total	6,005	343	6,348

The clerical and office employees (exclusive of building service employees) of the petitioners are further indicated in the following groups:

	Number of Employees		
	Weekly	Monthly	Total
Meter readers	895	2	897
Collectors	1,132	...	1,132
Commercial relations department employees (excluding meter readers and collectors)	5,884	176	6,060
Sales department employees	1,985	216	2,201
Controller's and auditing department employees	1,261	155	1,416
Other clerical and office employees	8,431	950	9,381
Total	19,588	1,499	21,087

Annual Payrolls of Petitioners

17. The total annual payrolls of the petitioners (including predecessor Companies within the period), for the years 1935 and 1936, including retirement annuities and separation allowances paid, were as follows:

Company	Year 1935	Year 1936
Consolidated Edison Company of New York, Inc. . .	\$13,696,645.73	\$15,759,234.25
The Astoria Light, Heat and Power Company	1,812,556.89	641,555.58 ¹
New Amsterdam Gas Company (Including The East River Gas Company of Long Island City)	547,538.51	497,576.23 ³
Central Union Gas Company	371,666.68	380,267.33 ³
Northern Union Gas Company	873,616.01	880,660.61 ³
The Standard Gas Light Company of the City of New York	35,421.72	9,702.78 ¹
New York and Queens Gas Company	360,096.76	136,677.23 ¹
The New York Edison Company, Inc.	28,244,977.47	28,013,579.89 ²
Brooklyn Edison Company Inc.	16,207,835.40	16,375,685.03

Company	Year 1935	Year 1936
New York and Queens Electric Light and Power Company	7,906,398.81	7,939,416.87
The Yonkers Electric Light and Power Company	829,745.43	789,909.38
Consolidated Telegraph and Electrical Subway Company	2,650,055.35	2,274,733.50
The Brush Electric Illuminating Company	1,156.24	1,187.93 ²
Bronx Gas and Electric Company	829,630.54	878,444.67 ³
Westchester Lighting Company	5,011,803.03	5,221,244.01
New York Steam Corporation	2,093,928.09	2,092,115.11
Total	\$81,464,072.66	\$81,891,990.40

Collective Bargaining by Petitioners' Employees.

18. Subsequent to the enactment of the National Industrial Recovery Act in 1933, the petitioners complied in good faith with Section 7(a) thereof as embodied in The President's Re-employment Agreement and in proposed Codes for the gas, electric and steam utility industries, pursuant to which their employees had the right to bargain collectively through "representatives of their own choosing"; and the petitioners freely allowed their employees to establish an electoral system whereby the employees elected by secret ballot their free choice of representatives for collective bargaining with the petitioners as employers. Under the electoral system thereby established by the almost unanimous

¹ Five months ended May 31, 1936; merged into the Consolidated Edison Company of New York, Inc., on June 1, 1936.

² Eleven months and 22 days ended December 22, 1936; merged into the Consolidated Edison Company of New York, Inc., on December 22, 1936.

³ Eleven months and 23 days ended December 23, 1936; merged into Consolidated Edison Company of New York, Inc., on December 23, 1936.

vote of the petitioners' employees, the members of any labor organization might and did become candidates, along with non-members of any labor organization, for election by the employees by secret ballot, as the representatives chosen by the employees for collective bargaining with the petitioners as employers. Collective bargaining through such elected representatives of the employees took place until the end of April, 1937; and the petitioners in good faith defrayed, as a part of the costs of operating their business under modern conditions, such costs and expenses of the operation of such electoral system as were certified to it as actual and reasonable by the elected representatives of their employees. This electoral and representation plan was believed by the petitioners to be in no respect a "company union"; in any event, it fulfilled the voted wishes of the employees, and would have complied with the requirements of Section 7(a) of the National Industrial Recovery Act, had the same been embodied in an effective Code, which did not take place.

19. When the enactment of a State Labor Relations Act became in prospect, whereby the concept would be changed from that of collective bargaining for the employees by elected "representatives of their own choosing" to their representation either by individuals or by a labor organization of the employees' own choosing, and it would become contrary to the spirit or letter of the collective bargaining concept for the employers to contribute to the cost of maintaining and operating the electoral system for the choice of representatives, the petitioners notified the elected representatives of their employees that the petitioners would not continue their financial support of the representation plan established by vote of the employees and would conform to the policy of the State law as to the representation of employees. It was the undisputed admission of witnesses for the National Labor Relations Board at subsequent hearings before that Board (confirmed by a stenographic transcript of such remarks) that, at the time of such notification to the employees, the principal executive officer of the petitioners stated, on April 22, 1937, to a large meeting of the employees and their elected representatives, to be carried back to the rank and file of employees:

"You go out and do what you want, but so far as the management is concerned it cannot and will not pay any money for that purpose [maintenance of an independent union by the employees]. * * * You are to do as you please. We are not taking the position that you must do this or you cannot do this. You have to make the choice."

20. The petitioners or some of them had been in contractual relations with the International Brotherhood of Electrical Workers, a labor organization affiliated with the American Federation of Labor, for more than ten years; and this agreement had been mutually observed and fulfilled, with amicable settlement of such disagreements as arose, and with specific contractual recognition, on the part of the International Brotherhood of Electrical Workers, of the petitioners' paramount duty and responsibility to maintain continuous service to their customers, without interruption because of labor disputes. In 1936, the petitioners had acquired, and had taken over the operation of, two electric generating stations formerly operated by the New York Central Railroad Company; and it was understood by the petitioners that the employees of those two stations had been for some years members of the International Brotherhood of Electrical Workers, or the American Federation of Labor. Among the petitioners' employees for many years had been members of the International Brotherhood of Electrical Workers, and no labor dispute threatening interruption of service had ever arisen with those employees.

21. With the prospect that the laws of the State of New York, in course of enactment by its Legislature, would no longer sanction such an employees' representation plan as had been maintained in good faith since 1933 or 1934, the President of the International Brotherhood of Electrical Workers renewed his demand or request that the petitioners recognize the International Brotherhood of Electrical Workers as collective bargaining agency for at least such of the petitioners' employees as were or became members of that recognized labor organization, and enter into a collective bargaining agreement covering wages, hours and conditions of employment, whereby labor disputes as to such matters could be amicably settled. The petitioners, on April 20, 1937, agreed with the International

Brotherhood of Electrical Workers to negotiate and make such labor agreements, pursuant to which the International Brotherhood of Electrical Workers and its local Unions made up of petitioners' employees became the collective bargaining agency for such of the employees as were or became members of the International Brotherhood of Electrical Workers.

22. After negotiations, such collective bargaining agreements with the International Brotherhood of Electrical Workers and its members were entered into in good faith by the petitioners, effective as of various dates between May 28th and June 15, 1937, and by reason of their provisions were believed to furnish an assurance of the continuity of service and an effective safeguard against interruptions of service through labor disputes, the amicable adjustment or arbitration of which was provided for in such contracts. A copy of such agreement, entered into by and between the petitioner Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers and its Local Union B830, is hereto annexed and made a part hereof, marked "Schedule A." The agreements made between other petitioners and the International Brotherhood of Electrical Workers and its appropriate Local Unions are similar in general form but contain such variant provisions as to vacations, work in inclement weather, and the like, as are appropriate to the conditions of the business of the particular petitioner. Leave is asked to produce a copy of each such agreement upon the hearing of this petition.

The New York State Labor Relations Act

23. Evidently in pursuance of the policy of the State of New York that corporations such as the petitioners created by and under the laws of the State of New York and subject to the regulatory jurisdiction of the State of New York and its Public Service Commission as to their rates, revenues, expenses, properties, accounts, operations, etc., should be and remain subject to the jurisdiction and powers of the State of New York as to their labor relations, the New York State Labor Relations Act was enacted on May 20, 1937, with the approval of The Governor of the State of New York, as Chapter 443 of the Laws of

1937, and is by reference made a part hereof. The Act created a New York State Labor Relations Board, with jurisdiction, powers and duties as therein provided, was effective on and after July 1, 1937, and is patterned generally after the National Labor Relations Act, although somewhat more specific, and is applicable to the labor practices of employers engaged in business within the State of New York. The petitioners aver and believe that it was thereby intended by the State of New York that their labor relations should be and remain in all respects subject to the jurisdiction and laws of the State of New York, to which the petitioners are subject in all other valid respects.

Proceedings by and Before the National Labor Relations Board

Charge Filed by the C. I. O.

24. On or about May 5, 1937, the United Electrical and Radio Workers of America, affiliated with the Committee for Industrial Organization and hereinafter referred to as "the C. I. O.", filed a charge with the Regional Director of the National Labor Relations Board (hereinafter referred to as "the National Board" or "the Board") for the Second Region. This charge of the C. I. O. alleged or assumed that the National Board had jurisdiction over the petitioners, their employees, and their labor relations. By virtue of Section 10(b) of the National Labor Relations Act (49 Stat. 449; hereinafter called "the National Act"), the filing of such a charge by a labor organization and the specification of claimed grievances or "unfair labor practices" are the basis of subsequent proceedings and complaint against employers subject to the jurisdiction of the National Board, and constitute a specification of the matters as to which complaint may, upon a proper showing, be filed by the Regional Director with whom such a charge is filed. The charge of the C. I. O. as to the petitioners related only to claimed "unfair labor practices", and alleged violations only of Section 8, subdivisions (1), (2) and (3) of the National Act. The "unfair labor practices" charged by the C. I. O. were that the petitioners were discriminating against members of the C. I. O. with regard to hire and tenure of employment, were coercing and intimidating the C. I. O., and were aiding in the organ-

ization of the International Brotherhood of Electrical Workers, an affiliate of the American Federation of Labor (herein called "the I. B. E. W."), in order to interfere with the employees' self-organization. The discriminatory and coercive action alleged was principally the discharge of five employees (Messrs. Wersing, Greulich, Kennedy, Emler, and Wagner), claimed to have been discharged for union activities. The charge was filed by Wersing in behalf of the C. I. O.

Complaint by Regional Director Upon Charge Filed
by C. I. O.

(25. On or about May 12, 1937, the respondent National Board, in purported futherance of the charge filed by the C. I. O., issued a complaint against the petitioners, and thereby asserted and undertook to exercise jurisdiction over the petitioners and their labor relations. The complaint by the National Board was made and issued for it by Elinore Morehouse Herrick, its Regional Director for the Second Region, New York City. The complaint alleged, in substance, that the petitioners had violated the National Act by engaging in "unfair labor practices" affecting commerce, within the meaning of the National Act, Section 8, subdivisions (1), (2) and (3), which had been specified in the charge filed by the C. I. O., and also within Section 2, subdivisions (6) and (7), which had been in no way specified or referred to in the charge filed by the C. I. O. The complaint of the National Board alleged the improper discharge of the five employees named in the charge filed by the C. I. O. The complaint devoted eighteen paragraphs to an assertion of the jurisdiction of the National Board over the petitioners, and six paragraphs to claimed grievances against the petitioners, which the complaint sought thereby to bring within the jurisdiction of the National Board, rather than under the jurisdiction of the State Board and the State Act. Some sixteen other States have enacted statutes for the like regulation of labor relations and labor practices within their borders, and the question of jurisdiction as between the National and State Boards becomes thereby of considerable public and general importance.

Preliminary Question of Jurisdiction of National Board over Petitioners

26. The first question which arose, and which the petitioners believe should have been and should now be first determined, was that of the jurisdiction claimed by the National Board as to and over the petitioners, their employees, and their local, intra-state labor relations. The petitioners asked and urged that the question of jurisdiction should be heard and determined first and separately, before the petitioners, the National Board, and any others, were subjected to the burden and expense of a protracted hearing on the merits. The proceeding instituted by the National Board on complaint of its Regional Director, Second Region, in furtherance of the charge filed by the C. I. O. having been assigned Case No. II—C-224 upon the docket and records of the National Board, the petitioners entered, and maintained throughout the proceedings without prejudice, a special limited appearance and served a Notice of Motion, dated May 17, 1937, to dismiss the complaint for want of jurisdiction, on grounds particularly stated for a prior and separate hearing and determination of the jurisdiction of the National Board. A copy of the petitioners' Notice of Motion and of the affidavit upon which it was based is made a part of this petition, marked "Schedule B."

The Grounds of Challenge of Jurisdiction

27. The same objections to jurisdiction were raised as an affirmative defense in the verified answer filed by the petitioners (respondents before the National Board) as follows (Par. XIX; S. M. 900):

"The respondents jointly and severally allege that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect 'commerce' as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of

are under the jurisdiction of the State of New York and not of the Federal Government, and that the Legislature of the State of New York, has, upon the recommendation of The Governor, enacted an Act entitled 'An Act to amend the Labor Law, in relation to establishing a State Labor Relations Board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the Department of Labor' (Chapter 443 of the Laws of 1937), by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder. The respondents severally ask that the complaint and the proceeding be dismissed accordingly."

The petitioners' objections and contentions as to jurisdiction were also raised and reserved by appropriate motions and objections, from time to time during the hearings before the National Board (S. M. 6, 11-14, 40, 367-368, 523, 1429-1432*).

Prior Adjudication that Petitioners are not in Interstate Commerce

28. The efforts of the petitioners to obtain consideration of the question whether the National Board had any jurisdiction over the petitioners were due particularly to the fact that the petitioners had lately been adjudicated to be engaged exclusively in intra-state business and to do nothing which burdens or affects interstate or foreign commerce; and the assumption and exercise of jurisdiction by the National Board ignored and proceeded in disregard of that adjudication, which was duly proved in evidence before the Trial Examiner on the first day^o of hearings (S. M. 26-34).

29. In Consolidated Edison Company of New York, Inc., et al. v. Lamar Hardy, et al., an action brought in the

* The references in this petition to "S. M." are to pages of the *typewritten* transcript of record of the hearings before the Trial Examiner of the National Labor Relations Board.

United States District Court for the Southern District of New York to obtain an adjudication as to the applicability or validity, as to them, and to enjoin the enforcement against them, of the provisions and requirements of the Public Utility Holding Company Act of 1935, a final decree pro confesso was obtained by the plaintiffs on October 23, 1936. The judgment-roll was duly placed in evidence before the Trial Examiner by the present petitioners as their Exhibit No. 1 (S. M. 34). The defendants against whom judgment was obtained in that action were the United States Attorneys and other local officers of the United States who were charged with duties to enforce the statute. The defendant representatives of the Government of the United States did not deny the allegations of the bill of complaint or contest the right of the plaintiffs to a final decree in their favor. The Securities and Exchange Commission and its Regional Administrator in New York City were named as defendants and served with process; but service was quashed by the Court, upon their motion. Chief Counsel Burns of the Commission, and Assistant Attorney-Generals Benjamin Cohen and Thomas Corcoran, appeared and took part in the case.

30. In entering a decree pro confesso as to the inapplicability of the Federal statute to various of the respondents here, the United States District Court, per Caffey, D. J., referred, on July 30, 1936, as shown by Petitioners' Exhibit No. 2, to the "concession" by the Government

"that the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce." (Italics supplied.)

Final decree was entered accordingly on October 23, 1936. The Government of the United States took no appeal from such decree; and the time to appeal therefrom has expired (Exhibits Nos. 1 and 2 for petitioners). The decree pro confesso is shown by the judgment-roll to have been based upon a showing of facts substantially similar to that set out here in the Stipulation for the Determination of Question of Jurisdiction (Board Exhibit No. 2). The petitioners allege that this will appear from an examination of the allegations of Paragraphs 1, 2, 11, 12, 13, and related

paragraphs, of the bill of complaint, which were not denied or contested by the Government and so were taken by the Court to be true (see *Thomson v. Wooster*, 114 U. S. 104), whereas in the present case substantially the same facts have been agreed upon and stipulated by the National Board and the petitioners.

Request for Prior and Separate Hearing as to Jurisdiction Denied

31. Notwithstanding, the motion for a prior and separate hearing by and before the National Board on the question of jurisdiction was denied by it. The Order entered on June 2, 1937, provided that

"A complaint having been duly issued in the above matter alleging that respondent has engaged in certain unfair labor practices within the meaning of Section 8 of the National Labor Relations Act, and thereafter respondent having filed a motion to dismiss the complaint and having requested a hearing on said motion before hearings held upon the complaint, and the Board having duly considered the matter:

"It is hereby ordered that the respondent's request for a hearing on the motion to dismiss the complaint before any hearing is held on the complaint be and hereby is denied."

Reserving their objections and limited appearance, the petitioners duly excepted to these determinations (S. M. 38-39). The motions to dismiss for want of jurisdiction were renewed and amplified, at the close of the Government's case (S. M. 1429-32). At the close and submission of the whole case, the petitioners respectfully renewed their request that a hearing be granted and held by and before the whole National Board on the question of jurisdiction; but no such hearing was ever accorded to the petitioners by and before the National Board, on the question of jurisdiction or any other phase of the case.

Repeated Amendments of the Complaint During the Hearings

32. The complaint of the Regional Director of the National Board was amended from time to time during the hearings (S. M. 39, 364-365, 1425-1426); where the changes

were substantial, this was allowed over the petitioners' objections (S. M. 365-368, 523, 1426). The complaint as first filed varied substantially from the charge filed by the C. I. O.; the subsequent amendments were without relation to the charge, which was never amended or supplemented. The verified answer of the present petitioners was filed on June 14, 1937 (S. M. 900, 1501). In filing their answer, the petitioners retained their special and limited appearance, and the answer re-asserted and reserved their objections to the jurisdiction of the Board (Rules and Regulations, Series 1, as amended; Article II, Section 18).

33. Hearings before a Trial Examiner having been begun on June 3, 1937, the first amendment of the complaint took place on June 10, 1937, when an amendment was allowed, pursuant to motion, to amend Paragraphs 19, 20 and 21 of the original complaint by adding thereto the name of Stephen L. Solosy as an additional discharged person within the purview of those paragraphs. The amendment was allowed without objection from the present petitioners, who reserved, however, their objections to jurisdiction.

34. On June 14, 1937, the National Board moved further to amend its complaint. This amendment changed Paragraph 23 thereof so as to allege, for the first time, that the matters and things set out in Paragraph 22 of the complaint affected "commerce" as defined in the Act. Only by such an averment could the matters alleged in Paragraph 22 be brought within even a claim of jurisdiction of the National Board. The particular significance was that Paragraph 22 was the paragraph which contained the allegations as to the I B E W. Up to that time, these had not been alleged to affect commerce as defined, and the I B E W as a bargaining agency had not been attacked in the complaint, as the issues were understood. The amendments were deemed substantially to change the nature and scope of the issues under the complaint, and to produce a fatal defect of parties. The purpose and effects of these changes were brought out in the grounds of objections and motions to dismiss for defect of parties (S. M. 523); and counsel for the petitioners said (S. M. 365-366):

"This application this morning for an amendment of which I had information on Saturday by bringing the alle-

gations of paragraph 22 into the scope of the averments of paragraphs 23 and 24, which previously had contained no reference to paragraph 22, certainly have the effect, if they are granted, of bringing an 8 (2) cause of action definitely into this case. Under the circumstances, although I realize the entire good faith of all that has taken place, I do not think that in behalf of the respondents we should consent to the amendment. We reserve our previous objections, not only to the jurisdiction, but also to this broadening of the complaint under which we are proceeding."

The granting of this further amendment of the complaint, over objections, was excepted to, at the close of the hearing on June 14, 1937; and counsel for the petitioners noted his exception (S. M. 523):

"I respectfully except, and in behalf of the respondents reserving our objections to jurisdiction, we ask that this proceeding be now terminated because of a fatal defect of the parties."

This request was denied, and the hearing proceeded on the changed and broadened issues. Testimony was taken accordingly; and the decision, findings, and Order of the National Board embrace many matters brought within the purview of the case only by and after the allowance of this vital amendment. If it should be now claimed nevertheless that the effects of this highly prejudicial amendment in course of trial were obviated by the finding of the National Board that the petitioners were not guilty of "unfair labor practices" within the scope of Section 8(2) of the National Act, then it follows that much of the testimony and many of the findings and directions of the National Board were outside the issues presented by the pleadings, or else that these matters were brought within the purview of the case only by a cryptic and highly improper further amendment allowed only at the final hearing (S. M. 1426).

35. On the last day of the hearings (July 6, 1937), counsel for the National Board moved vaguely that the pleadings in the case be conformed to the facts (S. M. 1426). Questioned by the Trial Examiner as to what he meant by such a motion, counsel for the National Board replied (S. M. 1426):

"Just a question of having the dates and other matters which appear in the complaint made certain by the testimony of witnesses who have appeared in the proceedings."

Counsel for the petitioners objected to the granting of the amendment on the ground (S. M. 1426):

"We are here upon the complaint and charge.

"Granted that the proof does not sustain the complaint and the charge, I do not believe that this Board would have power to amend at this stage, and it will certainly appear that there has been no notice of hearing upon anything except the complaint in its present form."

Before the closing of the case by the Trial Examiner on July 6th, counsel for the petitioners asked for an opportunity for a further hearing to permit the submission of additional proof. In support of that application, he cited the fact (S. M. 1580):

"* * * that over my objection this morning, your Honor allowed the Board, the Government, to amend its complaint to conform to proof. Now, I assert an absolute right under those circumstances to present proof and meet such changes and such issues and facts as your Honor allowed."

To which the Trial Examiner replied (S. M. 1580):

"I am afraid I consider myself bound by the decision of the Board in respect to eliciting testimony."

The decisions and rulings of the Trial Examiner, allowing each of the above-stated amendments, are affirmed and adopted in the decision of the National Board. Copies of the complaint and answer, showing the amendments, are by reference made a part of this petition.

Validity of Contracts with I. B. E. W. Not Within Issues

36. The findings and conclusions of the National Board that the petitioners' collective bargaining contracts with the I. B. E. W. and its seven Local Unions should be "dis-established" and disregarded, and are invalid, and that the I. B. E. W. consequently cannot act as the bargaining agent of such of petitioners' employees as choose to belong to the I. B. E. W. and bargain through it, were in no way within the scope of the charge filed by the C. I. O., and were in no way within the scope of the complaint on which the notice of hearing was based and given and pursuant to which

the hearings were conducted. The complaint at first served and the complaint as repeatedly amended nowhere refer to such contracts and such issues. If they were brought into the case at all for the purposes of the National Board's decision and Order, it must have been by vague amendments allowed under such objectionable circumstances as to deprive the petitioners of a fair trial and full hearing upon defined issues, all contrary to the constitutional safeguards.

37. To proceedings aimed at or involving the validity of the contracts with the I. B. E. W. and the continued observance of the contractual rights under them the I. B. E. W. was a necessary and indispensable party. It was never named as a party to the proceeding. Under the Rules and Regulations of the National Board, only those named as parties to a proceeding may participate or be heard. Counsel for the National Board claimed (S. M. 519-520) that his Exhibit No. 1 showed that notice of the proceeding, with a copy of the original complaint, was served upon Local No. 3 of the I. B. E. W. at 103 East 25th Street, and that its receipt was acknowledged by one D. Kaplan on May 12, 1937. Local Union No. 3 was not identified as a party to the contracts or to be a general agent of the I. B. E. W. or authorized to accept service of notice for it. Moreover, the complaint at that time suggested no issue as to the I. B. E. W. contracts. Not until June 14, 1937, was the complaint amended so as to allege that the claimed acts of assistance and coercion involving the formation of the I. B. E. W. came under the Board's jurisdiction because they were claimed to affect "commerce" as defined in the National Act; and not until July 6, 1937, after all testimony had been closed, was the complaint amended, if it ever was, at most to cover supposedly unsubstantial variances between the pleadings and the proofs (S. M. 1426). Nothing in the record has ever indicated that the I. B. E. W. or its Local No. 3 (in no way identified with the petitioners' contracts or employees) was served with any notice whatever, at any date subsequent to May 12, 1937, which was before the repeated amendments of the complaint had been undertaken.

National Board Invades Judicial Functions in "Dis-establishing" Contracts

38. The National Act does not vest in the National Board jurisdiction or power to invalidate, annul or "dis-establish"

contracts between employers and recognized labor organizations, or power to direct and require one party to such contracts, in the absence of the other, to disregard and "dis-establish" such contracts. Judicial power as to such contracts cannot lawfully be delegated to the Board, and cannot lawfully be usurped and exercised by the Board as an administrative agency. Construed by the Board as delegating to it such judicial powers, the National Act as so construed is repugnant to the Constitution of the United States.

Hearings and Stipulation for Determining Jurisdiction

39. The first hearing before the Trial Examiner, Mr. Robert H. Gates, designated by the National Board, took place in New York City. The evidence received on that day related to the question of jurisdiction over the petitioners, on which the pertinent evidence had been put in the form of a "Stipulation for the Determination of Question of Jurisdiction." This stipulation of the parties was offered by the National Board as its Exhibit No. 2, and constitutes the record on which the question of jurisdiction is to be determined. A copy of that stipulation is by reference made a part of this petition, and leave is asked to submit it separately to the Court.

Hearings Before the Trial Examiner on Other Issues

40. Testimony on the merits was begun on June 10, and was continued on June 11, 14, 15, 16, 17, 23, 24 and July 6, 1937. Some twenty-eight witnesses were called by the National Board, and twenty exhibits were marked in behalf of the Board. A great deal of the evidence was in documentary form, received as exhibits. Twenty-five exhibits were marked in behalf of the petitioners. The stenographic transcript comprised 1584 pages.

Petitioners Were Arbitrarily Denied a Fair and Full Hearing

41. The case in behalf of the National Board was completed unexpectedly on June 24th, aside from a few minor matters (S. M. 1410, 1416). Recess was taken until July 6th because of the absence of Mr. Floyd L. Carlisle, Chairman of the Board of the petitioners, who was in Europe (S. M. 1415). Decision was reserved as to whether the testimony of Mr. Harold C. Dean (who was in Milwaukee, Wis-

consin, in attendance at a meeting of the American Institute of Electrical Engineers) and of other necessary witnesses for the petitioners, would be received on the adjourned date (S. M. 1421). Leave was granted to petitioners' counsel to present the matter to the National Board by letter (S. M. 1421). This was done by petitioners (their Exhibit No. 25 before Board; see "Schedule C" attached to this petition).

42. On July 6th, the case for the National Board was completed (S. M. 1425-1427), motions were made in behalf of the Board (S. M. 1425) and the petitioners (S. M. 1426-1432); and the testimony of Messrs. Carlisle and Dean was taken (S. M. 1433-1576). Under the direction of the National Board (Respondents' Exhibit No. 25a), the Trial Examiner declined to permit the calling of other witnesses (S. M. 1580), who were present in the hearing-room and ready to testify. An offer of proof on behalf of the petitioners was made, both before and after the omnibus amendment of the complaint on the last day (S. M., 1581-1584); and counsel for the petitioners duly excepted to the refusal to permit the presentation of material testimony of witnesses (S. M. 1584), two of whom were present, and were necessary for the refutation of matters brought belatedly into the case by improper amendment of the complaint. The petitioners allege that the Trial Examiner, acting at the instigation and under the telephoned directions of the National Board, arbitrarily and unnecessarily denied to the petitioners a fair, full hearing according to the law of the land, and deprived them of the protection and benefit of testimony to meet issues belatedly and improperly brought into the case by amendment and without the presence of the party indispensable for the litigation and determination of such issues, all contrary to the constitutional rights of the petitioners.

43. The National Board having belatedly brought the I. B. E. W. contracts into the case by amendments of the pleadings, it is now claimed by the Board, the petitioners without objection amended their answer (S. M. 1431-32) so as to plead, as a further affirmative defense, that the contracts executed by the petitioners and the I. B. E. W. and its Local Unions had rendered moot and beyond the jurisdiction of the National Board any controversy raised by the complaint as amended, with respect to "unfair labor

practices" involving Section 8, subdivisions (2) and (3), thereof.

Arbitrary Exclusion of Petitioners' Testimony

44. The utterly mistaken and arbitrary considerations which led the National Board to direct and require its Trial Examiner to close testimony on July 6, 1937, and to refuse to receive important testimony offered by the petitioners and available through witnesses then present in the hearing room (S. M. 1576-79), were fully brought to the attention of the National Board, both at the time and at the suggestion or with the permission of the Trial Examiner, and subsequently when the petitioners were urging the National Board for the granting of an opportunity to present the relevant and important testimony which had been excluded despite the substantial amendment of the complaint during the last minutes of the last session before the Trial Examiner (S. M. 1580-84). Counsel for the petitioners specifically called attention to petitioners' need and right to present such testimony in view of the amendments then and there allowed (S. M. 1580), but the Trial Examiner felt obliged to adhere to his telephoned instructions from the National Board in Washington.

45. All of these matters were the subject of correspondence between the National Board and petitioners' counsel, before and after the final hearing, with permission of the Trial Examiner (S. M. 1576). Copies of this correspondence are annexed to this petition and made a part thereof, as "Schedule C." Particularly from the National Board's letter of July 8, 1937, and the petitioners' reply of July 19, 1937, petitioners believe that it appears clearly that the direction of the National Board for the exclusion of such testimony was based upon a wholly mistaken understanding of what had taken place at the hearings. Although these mistaken and arbitrary assumptions of the National Board in Washington were duly brought to its attention, with citations of the actual state of the record, the petitioners were never given an opportunity to present such testimony, even after the case had been "transferred to and continued before the Board" (Order of September 28, 1937; quoted in Paragraph 38 hereof).

Trial Examiner Permitted Remote Hearsay and Mere Rumor to Dominate the Testimony

46. The petitioners believe, and therefore allege, that the testimony received by the Trial Examiner as material and relevant to the allegations of the complaint other than that of the jurisdiction of the Board over the petitioners consists so predominantly of remote hearsay and mere rumor repeated under circumstances which could give it no probative force whatever as against the petitioners, and that the record here is so utterly dominated by such hearsay and rumor, that the decision, findings and Order of the National Board could not be said to be supported by evidence, in any legal sense. As to the issue of jurisdiction, the petitioners aver that the findings of the Board (Findings, Par. IV) are without any evidence whatever to support them. The petitioners alleged that, on the part of the witnesses called by the Board from the C. I. O. and the Independent Union, there was a great deal of partisan and argumentative talk on the stand, most of it remote and utterly worthless hearsay, in no way related to or binding upon anyone, and that such testimony should have been excluded from the record and not admitted at all; its purpose was only to try to paint and color a picture that would serve the ends of the labor organization to which such witnesses belonged; viz., the C. I. O. or the Independent Union; in support of which allegations the petitioners cite and refer to the transcript of the hearings before the Trial Examiner. The petitioners further allege that hearsay three or four degrees removed was resorted to indiscriminately, and could have no probative force, in support of which allegation the petitioners cite and refer to the said transcript. To illustrate: A member and paid organizer of the C. I. O. (Kennedy) would testify to what another member and organizer of the C. I. O. (Young) told him on the telephone (S. M. 645), as to what some other employee told Young that he thought the management was doing or trying to do (S. M. 646). Then the other C. I. O. member (Young) took the stand and gave more of similarly remote hearsay. (S. M. 1123).

Decision of Board is Based on Evidence of no Probative Force or Effect

47. The petitioners recognize that, in hearings before an administrative but quasi-judicial tribunal such as the Na-

tional Board, some relaxing of the "hearsay rule" is necessary and proper, so long as the testimony first received is later connected, is inherently of such a character and tenor as to carry to the minds of reasonable men a conviction of the truth of the matters narrated (not of the fact that they were narrated), and the ultimate findings are based upon substantial evidence. The petitioners respectfully allege, however, that an examination of the "testimony" here taken will disclose that the relaxing of the "hearsay" rule was pressed beyond all reason and beyond permissible limits in the present proceedings. A case against the petitioners could not be made by narrating what one employee said to another, about a labor organization which they both opposed, or by narrating what was said by some one (not on the stand) about what was said and done at a meeting or conference of employees at which the management was not present; yet instances of this character abound in this record and are the exception rather than the rule. Objections duly made and pressed, on many occasions, in behalf of the petitioners, to the receipt of wholly incompetent and improper evidence, were in almost every instance overruled by the Trial Examiner, and exceptions were duly taken thereto. The decision, findings and Order of the National Board specifically affirm and adopt the many erroneous rulings of the Trial Examiner in admitting and excluding testimony. The petitioners allege that the findings made by the National Board in support of the allegations of the complaint, other than those as to the jurisdiction of the Board over the petitioners, accepted and took such remote, unconnected, partisan and utterly worthless hearsay as virtually the sole "evidence" for any such findings; and such a basis of finding and determination was arbitrary, contrary to law, and violative of the rudiments of fair hearing.

Petitioners Were Arbitrarily Denied a Report by the Trial Examiner Who Heard the Evidence

48. Testimony having been closed by Trial Examiner Gates, over the petitioners' objections and with their testimony uncompleted on July 6, 1937, the orderly course under Rules 34 to 36 of Rules and Regulations, Series 1, as amended, issued by the National Board under the National Act was the preparation and filing of an intermediate

report by the Trial Examiner, the service of the same upon the petitioners and other parties, the affording of an opportunity to the petitioners and other parties to file objections and exceptions to such intermediate report, and then a hearing of the matter by and before the full National Board, with an opportunity to offer further testimony (including that arbitrarily excluded) if the National Board was willing then to receive it. In any event, if that procedure were followed, there would be an opportunity for argument before the National Board and for the submission of briefs to the National Board; also an opportunity to ask for additional findings and for the correction of erroneous and incomplete findings, if any such findings were made by the Trial Examiner.

49. Each and all of these valuable opportunities, the essentials of fair trial and hearing, were denied and withheld from the petitioners, arbitrarily and without explanation by the National Board. There is no intermediate or other report or findings by the Trial Examiner, who alone saw the witnesses and heard the evidence without the presence of any member of the National Board. No argument has been allowed before the National Board, as to jurisdiction or anything else. No briefs have been permitted to be prepared and submitted to the National Board, on the question of jurisdiction or anything else.

50. On September 29, 1937, nearly three months after the testimony had been arbitrarily closed by the Trial Examiner at the instigation of the National Board, and although no additional charges had been filed with the National Board or its Regional Director as provided by Section 37 of the Rules and Regulations of the Board, the petitioners received a copy of the following unexplained Order by and from the National Board:

"A hearing having been duly held in this proceeding before a Trial Examiner duly appointed, and the Board deeming it necessary, in order to effectuate the purposes of the National Labor Relations Act, that the proceeding be transferred to and continued before it,

"It is Hereby Ordered, in accordance with Section 37 of Article II of National Labor Relations Board Rules and

Regulations—Series 1, as amended, that this proceeding be transferred to and continued before the Board.

"By direction of the Board:

Benedict Wolf, Secretary. (Seal.)" (Italics supplied.)

51. The foregoing Order was made without notice to the petitioners and without an opportunity to be heard thereon, and was not based upon any findings of fact by the Board or report by its Trial Examiner. The petitioners have thereby been denied and deprived of a report and findings by the only judicial officer who saw the witnesses and heard the testimony. What he found and reported as to the facts is unknown to the petitioners. The case was never "*continued before the Board*". Petitioners expected that it would be so continued, and that an opportunity would be afforded for hearing; oral argument, and briefs on the question of jurisdiction, on the denial of opportunity to the petitioners to present and complete their case, and on the many objections and exceptions noted as to the improper receipt of evidence. None of these essentials of fair hearing and determination of issues of such importance has been accorded. On the contrary, without further hearings or affording the petitioners any opportunity to present any further evidence, oral argument or briefs, the National Board handed down its Decision and Order on November 10, 1937.

Collective Bargaining Agreements of Petitioners with I. B. E. W. and its Local Unions

52. Paragraph XV of the verified answer of the petitioners (respondents below) sets forth that

"Respondents further allege that, since April 20, 1937, they have severally negotiated collective bargaining agreements with the International Brotherhood of Electrical Workers and the respective local unions of that labor organization, in behalf of such employees of the respondents as belong to the International Brotherhood of Electrical Workers and such local unions, and that the membership of such local unions is believed by the respondents to represent more than a majority of the employees of each respondent. Such labor agreements negotiated with the International Brotherhood of Electrical Workers have in most instances been executed by and in behalf of both the respondents and the International Brotherhood of Electrical Workers and its

Local Union, but in a few instances are in course of execution at the time of this answer.

53. At the final hearing before the Trial Examiner and in view of the repeated amendments of the complaint over petitioners' objections and exceptions, their answer was amended, without objection from the Board (S. M. 1432), so as to set up the labor contracts (Respondents' Exhibits Nos. 17-22), entered into and made effective on varying dates in May and June, by and between each of the petitioners (respondents below), the I. B. E. W., and the Local Unions constituting much more than a majority (eighty per cent) of the eligible employees of each of the petitioners (Respondents' Exhibit No. 16). The sole and undisputed evidence in the record is that the membership of the petitioners' employees in the I. B. E. W. and its respective Local Unions was, on June 29th, according to the records of the I. B. E. W., as follows:

Membership of Local Unions of the I. B. E. W. Having Collective Bargaining Agreements With Companies of the Consolidated Edison Company of New York, Inc., Group of Companies

(Data furnished to the Companies by the I. B. E. W. as of June 29, 1937)

Local Union No.	Em- ployees eligible to I.B.E.W. member- ship	Total member- ship	Per cent of eligibles	Paid-up members	Per cent of eligibles	Cards signed but does not yet paid	Per cent of eligibles
B-825 (Brooklyn Edison Company, Inc.)	8,100	7,200	89.0	6,150	76.0	1,050	12.9
B-826 (New York Steam Corporation)	970	910	93.7	850	87.7	60	6.1
B-828 (Consolidated Telegraph and Electrical Subway Company)	1,600	1,534	96.1	1,534	96.1	0	0
B-829 (Consolidated Edison Company of New York, Inc.—Electric)	13,200	8,680	65.8	6,018	45.6	2,662	20.2
B-830 (Consolidated Edison Company of New York, Inc.—Gas)	7,000	5,644	80.6	4,144	59.1	150	2.1
B-832 (Westchester Lighting Company)	3,082	2,968	96.3	2,375	77.1	593	19.2
B-839 (New York and Queens Electric Light and Power Company)	4,200	3,537	84.2	2,637	62.7	900	21.4
Totals	38,152	30,473	80.0%	23,708	62.2%	6,765	17.7%

The above figures are to be compared with those set out, in Paragraph 16 hereof, as the agreed and stipulated number of employees of the petitioners (see Stipulation for the Determination of Question of Jurisdiction—Board Exhibit No. 2; Par. 15).

54. The petitioners' answer as so amended sets up, as a separate defense, that by reason of the facts set out in Paragraph XV of the original answer and the further facts

above stated, the allegations of the complaint as to coercion and restraint of employees have become moot and academic; that the National Board has no power or jurisdiction to make any determination or order, under the National Act, in the pending proceeding and under such circumstances, in derogation of the contract lawfully made by the petitioners with a recognized and lawfully existing labor organization, which contract is valid and subsisting under the State Labor Relations Act of the State of New York.

Question of "Representation" Was Not Litigated

55. On the hearings before the Trial Examiner, questions were several times raised, in view of the ambiguous and uncertain character of the various amendments permitted to be made in the complaint after notice of hearing had been given and the hearings started and a great deal of incompetent and highly improper evidence offered and received, as to whether the question of the representation of the petitioners' employees for collective bargaining purposes and the question of the standing and legality of the I. B. E. W. as a collective bargaining agency were or were not involved in the proceeding. As the record shows (S. M. 190, 521), it was several times stated in behalf of the National Board that the question of representation and the question of the standing and validity of the I. B. E. W. as a labor organization entitled to bargain collectively were not involved in the complaint or the proceeding. The hearings proceeded, and were closed, upon that assurance, although counsel for the petitioners repeatedly pointed out (S. M. 190, 521) that proofs were being offered and received that bore solely on those questions and so were contrary to that assurance of the limitation of the scope of the issues in the case.

56. Nevertheless, in disregard of the assurance given by its representative upon the hearings and in disregard of the limitations thereby placed on the issues as to which the petitioners offered proofs, the decision, findings and Order of the National Board cancel and terminate the representation of eighty per cent of the petitioners' employees by the I. B. E. W. pursuant to contracts theretofore in force and in effect "outlaw" and condemn the I. B. E. W. as such collective bargaining agency of much more than a majority

of the petitioners' employees,—all this without the presence and participation of the I. B. E. W. and its Local Unions as parties to such litigation and adjudication, and contrary to the statements made in behalf of the National Board upon the hearings.

57. The collective bargaining contracts in effect between the petitioners and the I. B. E. W. and its Local Unions secure to the petitioners, their employees, their customers, and the general public, various substantial rights and contractual advantages, in the nature of property rights, which would be in effect destroyed if the decision, findings and Order of the National Board were permitted to stand.

58. The collective bargaining contracts outlawed by the National Board were placed in evidence by the present petitioners as their Exhibits Nos. 17 to 27 (S. M. 1470-1471). A typical agreement is annexed to this petition as "Schedule A." That in each instance the Local Union comprises much more than a majority of the eligible employees of each petitioner is the undisputed evidence (Respondents' Exhibit No. 16). These contracts were executed and made effective on various dates between May 28th and June 15th, 1937. The general character and policy of such agreements had been discussed in first instance by and between Mr. Carlisle for the present petitioners and Mr. D. W. Tracy, International President of the I. B. E. W. (S. M. 1434-1435); but the provisions as to wages, vacations, and some other matters were negotiated directly between the management and committees elected or selected by the employees constituting the respective Local Unions (S. M. 1460, 1461, 1465-1466). Mr. Tracy participated in the wage negotiations at some points (S. M. 1466, 1472).

Scope of the Contracts Invalidated by Board

59. By each contract, the employer (Article II)

"recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against

any employee because of his membership in the Brotherhood. *The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.*"

Each contract provides (Article I) that it shall "apply to all employees" of the Company "*who are members of the Brotherhood and are engaged in operations essential to the furnishing*" of the particular kind of utility service supplied to consumers, "*including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.*"

Responsibility and Procedures Assuring Against Interruptions of Service

60. From the point of view of the public and the petitioners (S. M. 1459), and probably also the employees, one of the most vital, inducing elements in such contracts was the setting up of procedures which would recognize the special public obligations of the petitioners in the supplying of local utility service under plenary regulation by the State of New York through its Public Service Commission, and particularly the public obligation to render adequate and economical service without interruption (Public Service Law, Section 65). Provisions which will prevent the interruption of service because of any labor disputes, by providing a mutually binding forum and formula for their solution, were and are deemed by the petitioners to be of prime public importance (S. M. 1459).

61. The "recital" of each contract (page 1), contains provisions similar to those of the contract with the gas employees of the Consolidated Edison Company; viz., that its purpose is to set up such a system of collective bargaining.

"as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company *efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory.*"

Arbitration in Lieu of Strikes or Lockouts

62. Article XII of each contract is entitled "Future Negotiations and Outlawing of Strikes and Lockouts." It has a vital bearing on the jurisdictional question here. Articles X and XI erect mutually binding procedures for the adjustment and arbitration of grievances and for the review of the discharge of employees, with the Governor of the State of New York appointing the third and neutral arbitrator, if need be. Article XII provides for the negotiation, and if need be the arbitration, of the terms of future contracts as to wages, hours, and other working conditions, on a basis which precludes strikes or lockouts, gives practical assurance against the interruption of service, and recognizes the paramount public obligations of the Company under the laws of the State of New York. For example: Article XII of the contract between the Consolidated Edison Company and I. B. E. W. Local Union No. B830 (gas employees) is as follows:

"Future Negotiations and Outlawing of Strikes and Lockouts

"18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. *The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law.* In the event the conferees

should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and *there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.*"

On November 9, 1937, it was announced by the I. B. E. W. and the petitioners that, at the instance of the I. B. E. W. and four of its Local Unions, differences arising under Article VII of the contracts were being submitted to arbitration, without cessation of work by members of the I. B. E. W. On November 10, 1937, the National Board issued its decision, findings and Order, undertaking to invalidate and annul the contracts under which the arbitration was to proceed.

Contract Provisions for Employees' Welfare

63. The standard provisions of the contracts as to hours of employment and working conditions (Article III), vacations (Article IV), and "provisions for sickness, disability, superannuation, retirement, etc." of employees (Article VI), will be recognized as fair and progressive. The undertaking of each of the petitioners, through Article VI of the contracts, parallels that of the Consolidated Edison Company as to its gas employees:

"Provisions for Sickness, Disability, Superannuation, Retirement, etc.

"8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional

Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained."

Before this Court, within the present year, the petitioner Consolidated Edison Company of New York, Inc., defended the constitutionality of the United States Social Security Act against suit by one of its stockholders (Norman v. Consolidated Edison Company of New York, Inc., decided April 12, 1937; 89 Fed. [2nd] 619).

Wage Increases Granted by Contracts

64. As to "wages and classifications" (Article V), the contracts which were first negotiated between the management and the committees selected by employees through some of the Local Unions provided, as their form and context show (see, also, S. M. 1460-66) for a five per cent increase in the rates of pay of all employees receiving less than \$5,000 a year, excepting those who had already received increases of at least five per cent in 1937. Subsequently, in negotiations between the Consolidated Edison Company and the committee chosen by its electric employees, a further provision for additional wage increases was obtained from the management (S. M. 1464); and this further provision was attached as a "rider" to all contracts, including those already executed (S. M. 1464-1465, 1469; see, also, Article V of Respondents' Exhibits Nos. 17-22).

65. It was represented to and understood by the management that these labor contracts were negotiated in each instance by committees selected by the Local Unions (S. M. 1460, 1465, 1466, 1480, 1481) comprising much more than a majority of the employees (Respondents' Exhibit No. 16); that these committees had the aid and advice of Mr. Tracy (S. M. 1466, 1472); and that in all or most instances, the contracts were reported to the management to have been submitted to, and to have been authorized or ratified by, the employees themselves at meetings of their Local Unions (S. M. 1496).

66. Contracts made under such circumstances and securing to the petitioners, their employees, their customers, and the general public, such substantial advantages, are

undertaken to be invalidated and "outlawed" by the decision, findings and Order of the National Board, contrary to and outside the defined issues of the complaint and proceedings, without support in the evidence, without the presence of the I. B. E. W. and its Local Unions as parties to such proceedings and determination, and wholly beyond the powers delegated to the National Board. If the National Act is to be construed and applied so as to confer on the National Board jurisdiction and power to hear such matters and to make such determinations as to contracts under such circumstances, the National Act as so construed and applied is invalid, unconstitutional, and repugnant to the rights of the petitioners under the Constitution of the United States.

The National Board's Conclusions of Law

67. On November 12, 1937, the Board served upon the petitioners its Decision and Order. It contains the following generalized "Conclusions of Law":

"Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

"1. United Electrical and Radio Workers of America, and its predecessor unions, and International Brotherhood of Electrical Workers are labor organizations within the meaning of Section 2(5) of the Act.

"2. Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy were, at the times of their discharges, and at all times thereafter, employees of the respondents, within the meaning of Section 2 (3) of the Act.

"3. The respondents, by discriminating in regard to the hire and tenure of employment of Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy and thereby discouraging membership in United Electrical and Radio Workers of America and its predecessor unions, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

"4. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights

guaranteed in Section 7 of the Act, have engaged and are engaging in unfair labor practices, within the meaning of Section 8 (1) thereof.

"5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

"6. The respondents have not engaged in unfair labor practices within the meaning of Section 8 (2) of the Act."

The Sweeping Directions of the Order of the National Board

68. The Order of the National Board dated November 10, 1937, reads as follows:

"Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

"1. Cease and desist from:

"a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

"b. Urging, persuading, warning or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

"c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondent's property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

"d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

"e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

"f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

"g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

"h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

"a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

"b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suf-

ferred by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

"c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

"d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith;

"3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(2) of the Act, is hereby dismissed without prejudice."

Specification of Grounds for Review

69. The petitioners believe, and therefore allege, that they are aggrieved and greatly prejudiced and injured by the mandatory and injunctive provisions of the Order of the National Board dated November 10, 1937, and by the findings and conclusions upon which the Order and such provisions thereof were based. Maintaining that the petitioners are in no way subject to the jurisdiction and powers of the National Board and the National Act, the petitioners

respectfully ask for a review of the said decision, findings, and Order, and of the said mandatory and injunctive provisions, by this Court; and the petitioners state and assign the following further grounds and reasons for such review:

Erroneous Findings and Conclusions as to Jurisdiction

(a) That the National Board erred in taking jurisdiction of the case, upon the charge filed by the C. I. O.; that the National Board erred in causing a complaint to be filed by its Regional Director for the Second Region, against the petitioners, upon such charge; that the National Board erred in failing and refusing to dismiss the complaint and the proceeding, upon the motion duly made by the petitioners in advance of hearing for want of jurisdiction; that the National Board erred in refusing to dismiss the complaint and proceedings for want of jurisdiction, upon motions duly made by the petitioners upon and during the hearings and at their close; that the National Board erred in refusing to dismiss the complaint and proceedings, in and by its such final decision, findings and Order; that the National Board erred in failing and refusing to hold that any such matters as were complained of were, if duly substantiated, within the exclusive jurisdiction of the State of New York and the New York State Labor Relations Board, pursuant to the New York State Labor Relations Act.

(b) That the National Board's findings as to the facts, particularly Paragraph IV thereof, which deals with the effect of the alleged unfair labor practices upon commerce as defined in the Act, are not supported by the evidence contained in the record herein and are contrary to the evidence and contrary to law; that the National Board should have found that the production, sale and distribution of gas, electric and steam services are the principal and actual business of the petitioners, and that such business and all activities in connection therewith are, and have been duly adjudicated to be, essentially intra-state and local and not to constitute operations in, or affecting, or in respect of, commerce as defined in the National Act or otherwise within the purview of the National Act.

(c) That the National Board erroneously found and concluded that the purchase and transport of raw materials

used in producing gas, electricity and steam by petitioners are sufficient to constitute operation in or affecting, or in respect of, commerce as defined in the Act; that there is no evidence to support such finding, and the conclusion is contrary to the evidence and contrary to law.

(d) That the National Board erroneously found and concluded that the supply of electric energy by some of the petitioners to local, State and Federal agencies located within their franchise territory, and the dependence of a number of particular consumers, located within petitioners' franchise territory, upon the supply of electric energy furnished by the petitioners, constituted operations by the petitioners in, or affecting, or in respect of, commerce within the purview of the National Act; that the National Board should have found and concluded that the supplying of some electric energy, gas or steam to governmental agencies does not subject the petitioners to the National Act; that the supplying of some electric energy, gas or steam to agencies of the Federal Government does not operate to confer jurisdiction on the National Board and is not a ground on which the National Act predicates jurisdiction; and that such sales, as a matter of law, are not sufficient to bring the petitioners' operations within the purview of the National Act.

(e) That the National Board should have found and concluded that the stipulated facts as to jurisdiction would sustain no other finding or conclusion than that a relatively small number of petitioners' customers are engaged in interstate commerce; that the petitioners are not made to engage in interstate commerce or in operations in, or affecting, or in respect of, commerce as defined in the National Act, because of the fact that some of the petitioners' customers are themselves engaged in interstate commerce or communication; and that the use which some of these customers may make of the comparatively small quantity of electric current supplied and delivered them within the petitioners' territories in the State of New York does not constitute operations in, or affecting, or in respect of, commerce as defined in the National Act or otherwise within the purview of the National Act.

(f) That the National Board should have found as a fact and concluded as a matter of law that the petitioners'

business of supplying on demand their local consumers at retail is wholly a local business and is subject to State regulation and that the effect on interstate commerce, if there be any, is no more than indirect and incidental.

(g) That the National Board should have found as a fact, and that there is no evidence in the record to support a contrary finding, that the petitioners have been adjudicated to be engaged exclusively in intra-state business and to do nothing which burdens or affects interstate or foreign commerce.

(h) That the record here affirmatively establishes that the claimed discharge of and refusal of two of the petitioners to reinstate six employees were not for membership or activity in any labor organization, did not obstruct or affect interstate commerce, were not in any close or intimate relation, or any relation, to or effect upon such commerce, and did not constitute an unfair labor practice within the meaning of Section 8, subdivision 1 of the National Act; and that the National Board should have found upon the undisputed testimony that these six employees were engaged in work of a distinctly local character, unrelated to the generation or transmission of electricity or gas, and in no way affecting interstate commerce; that Messrs. Wersing, Greulich and Wagner did office work upon "work order" records of local distribution properties of the New York and Queens Electric Light and Power Company (S. M. 539, 1503-1505); that their records and work had a close relationship to the "continuous property records" required and supervised by the Public Service Commission of the State of New York (S. M. 1507); that Messrs. Emler and Kennedy were linemen in the Overhead Bureau of the same petitioner, which operates only in a part of the Borough of Queens and has no generating station (see map attached to National Board Exhibit No. 2); that they worked on local distribution lines, and at the time of the termination of their employment they were extending local lines into consumers' premises (S. M. 758, 1566), for local supply of electricity; that Mr. Solosy was employed in testing and calibrating (for accuracy) the Thomas calorimeters (S. M. 272, 275), used in testing the calorific content of gas supplied to local consumers, to see if such gas maintained the thermal content (Btu's) required by the Orders of the Public Service Commission of the State of New York (S. M.

1319, 1329); that Messrs. Wersing, Greulich and Wagner voluntarily ratified and confirmed the termination of their employment and their discharge therefrom by bringing a suit in the New York State Supreme Court against the petitioner by whom they had been employed to recover additional benefits to which they claimed such termination and discharge entitled them, and that the undisputed proofs in no way showed that these now "stale" claims of discharge, in 1935 or early 1936, produced any substantial labor controversy, brought any dangers of interruption of service to consumers, or in any way affected interstate commerce or any commerce or any other public relationship of any of the petitioners; and that the National Board erred in failing or refusing so to find and conclude.

(i) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that of the approximately 2,324,800 consumers served by this group of Companies with electric service, about 1,896,800 are residential consumers, and that only about 427,100 are commercial consumers (preponderantly small), institutional consumers (religious, educational, charitable institutions and hospitals),⁴ and wholesale consumers, and that of the non-residential customers only a small part thereof are themselves engaged in interstate commerce.

(j) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that your petitioners are domestic corporations, organized and existing under general or special laws of the State of New York; that they are chartered by the State of New York to render essential services only within the State; that they carry on their operations only by virtue of general franchises granted by the State and local franchises granted by cities, towns, villages, etc.; and that your petitioners are accountable to local governments and to the State of New York for the adequate and continuous performance of these local franchise obligations.

(k) That the National Board erroneously omitted, failed or refused to find that which it was required to find

as a fact and to conclude as a matter of law, and to consider in its determination, that the supervision by the State over the operations of the petitioners extends to virtually every phase of their manifold activities; that the petitioners can supply service only to those within their local franchise territories; that without making their franchise rights subject to forfeiture, they could not withhold services when application therefor is duly made by inhabitants of their franchise territories; that they must, pursuant to Sections 65 to 72 of the Public Service Law, obey all lawful mandates of the Public Service Commission as to rates, quality and extent of service, accounting records and procedure, new construction, sales and purchases, and security issues in connection therewith, or be subject to the penalties imposed by Section 73, and the summary proceedings provided by Section 74, of the Public Service Law of the State of New York.

(l) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that all of the activities in which employees of the petitioners are engaged, especially as they relate to wages, hours and conditions of employment and method of production and distribution, have a direct effect upon the cost of operation and the rates to be charged, and that the regulation of rates as well as the cost and method of production, distribution and sale of gas and electric service are within the exclusive jurisdiction of the Public Service Commission of the State of New York, by reason of the provisions of Sections 66 and 67 of the Public Service Law.

(m) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that the services which the petitioners render to the inhabitants of the City of New York and County of Westchester have a direct, immediate and necessary effect upon the health, safety and comfort of the individuals and local community which they serve; that the protection of such health, safety and comfort is the sole concern of the City and State of New York; and that the people of the City and State of New York are solely de-

pendent upon the services of the petitioners to fulfil those State and local functions.

(n) That the National Board erroneously omitted, failed or refused to find that which it was required to find as a fact and to conclude as a matter of law, and to consider in its determination, that the generation of electricity is wholly a local intra-state process; that the distribution of the manufactured product, whether it was electricity, gas or steam, is a wholly separate process, and that the business of supplying the 2,324,800 consumers of electric energy, 1,896,800 of whom are residential consumers and the balance commercial consumers, and the approximately 1,165,700 consumers served with gas service, is a local intra-state business which is subject to the exclusive control of the State within which distribution takes place,

(o) That the assumption and attempted exercise of jurisdiction by the National Board in this proceeding are not authorized by any provision of the Constitution of the United States and amount to an unconstitutional usurpation, by an agency of the Federal Government, of powers reserved to the State of New York by Article X of the Amendments to the Constitution of the United States.

As to the Board's Denial of Essentials of Fair Trial and Determination

(p) That the National Board erred in refusing to allow the petitioners to present pertinent, important and available testimony, as more particularly shown in Paragraphs 41, 42, 44, and 45 hereof.

(q) That the National Board erred in allowing the repeated and substantial but vague amendments of its complaint, after notice of hearing had been served, while the hearings were in progress and after testimony had been closed, all as more particularly shown in Paragraphs 32, 34, and 35 hereof.

(r) That the National Board erred in transferring and continuing the case before itself, after the case had been closed, thereby arbitrarily depriving the petitioners of a report and findings by the Trial Examiner who alone saw the witnesses and heard the testimony; that the National

Board erred in omitting and failing to continue the case before it by a hearing by and before the Board, thereby depriving the petitioners of an opportunity to argue before the full Board the question of jurisdiction and other pertinent questions, and of the opportunity to file a brief with the Board, as well as an opportunity to offer to the Board the testimony which had been excluded by the Trial Examiner at the Board's directions, all as is fully shown in Paragraphs 48, 49, 50 and 51 hereof.

(s) That the National Board erred in permitting the record to be made up predominantly of, and to be pervaded and dominated by, remote hearsay testimony and mere rumor, and in basing its decision, findings and Order upon a record so dominated and pervaded, all as is shown in Paragraphs 46 and 47 hereof.

As to Other Prejudicial Errors of the Board

(t) That the record affirmatively establishes that the petitioners have not dominated and interfered with, and do not now dominate and interfere with, the administration of the I. B. E. W. or the Local Unions thereof, and do not contribute financial and other support to it, and have not thereby engaged in and do not thereby engage in any unfair labor practices within the meaning of Section 8, subdivision 1 of the National Act, and that the National Board erred in failing and refusing so to find.

(u) That the record affirmatively establishes as a matter of fact and law that the execution and taking effect of the collective bargaining contracts between the petitioners and the I. B. E. W. and the Local Unions thereof, render moot in this proceeding the allegations of the complaint as to "financial support" and "domination" of the I. B. E. W. and as to "coercion" of employees into joining the I. B. E. W., and that the facts as to those contractsoust the National Board of power and jurisdiction to make in this proceeding any determination or Order in derogation of those contracts; and that the Board erred in failing and refusing so to find.

(v) That the Order issued by the National Board, requiring the petitioners to cease and desist from giving effect to their contracts with the I. B. E. W. and from recognizing the I. B. E. W. as the exclusive representative of their em-

ployees, was and is beyond its power and jurisdiction to make, was and is in derogation of valid and subsisting contracts entered into and observed in good faith, and was and is improper, erroneous, and unjustified either by the facts or the law, and was and is an assumption and attempted exercise of judicial powers not conferred by law on the National Board.

(w) That the Order issued by the National Board, requiring two petitioners to reinstate six discharged employees, places an unreasonably onerous burden upon the petitioners, and would require the petitioners, for the sole reason that such men are members of a particular labor organization, to re-employ men released from work for proper reasons.

(x) That the National Board should have found as a fact and concluded as a matter of law that its failure to name and bring in the I. B. E. W. as a party to the proceeding barred the National Board from assuming jurisdiction as to the subsisting contracts.

(y) That among the National Board's findings as to the facts, there is absent any finding of fact (as distinguished from a conclusion) that the petitioners have been or are engaged in any practices constituting unfair labor practices, which lead or tend to lead to labor disputes burdening or obstructing commerce or the principal flow of commerce, or have or tend to have any close, intimate or substantial relation to any trade, traffic, commerce or transportation among the several States.

(z) That the evidence in the record does not support a finding or conclusion that the discharge of Martin A. Wersing, Julius A. Grenlich, Michael A. Wagner, William J. Kennedy, John F. Emler, Steven L. Solosy, and the petitioners' failure or refusal to reinstate any of them, interfered with, restrained or coerced the employees of the New York and Queens Electric Light and Power Company in the exercise of any rights guaranteed under Section 7 of the National Act, or that such acts were intended to discriminate in regard to hire and tenure of employment of such employees, or that the discharge of the six employees in any way affected interstate commerce.

(aa) That the record here is barren of evidentiary facts sufficient to support a finding or conclusion that the peti-

tioners have been or are engaged in any acts or practices constituting unfair labor practices in interstate commerce.

(bb) That the findings of fact and conclusions of law and the directive portions of the Order, dealing with the validity, and requiring the dis-establishment, of the contracts made by the petitioners with the I. B. E. W. and its seven Local Unions, were not germane to the complaint before the National Board, and were not lawfully involved in the proceedings, and were unauthorized by and contrary to law and to the Constitution of the United States.

(cc) That the findings and Order enjoining the petitioners from recognizing the I. B. E. W. as the exclusive bargaining agency in the absence of an election by the employees and the absence of the I. B. E. W. as a party to the proceeding, are unwarranted in law and in fact, in that the question of representation was not raised in the complaint before the National Board but was expressly excluded from the consideration of the Trial Examiner and the National Board, so that no evidence was properly received with respect thereto and the petitioners were not called on to litigate that issue.

(dd) That the conclusions of the National Board that the petitioners have engaged and are engaged in unfair labor practices within the meaning of Section 8 (1) of the National Act are as a matter of law inconsistent with and negated by its conclusion that your petitioners have not engaged in unfair labor practices within the meaning of Section 8 (2) of the National Act.

(ee) That there is no evidence in the record to sustain any finding that the petitioners were employing what the decision terms "industrial spies", at the time of or immediately prior to the hearings. The undisputed evidence showed affirmatively, and the National Board should have found, that the only instance which the National Board sought to present, as to such "industrial spying," was one of alleged "trailing" that was said to have happened in April of 1935, before the taking effect of the National Act, and that any such practices were discontinued by the petitioners in 1936.

Wherefore, the above-named petitioners jointly and severally petition this Court for a review of the decision,

findings and Order of the National Labor Relations Board dated November 10, 1937; and they ask:

(1) That a copy of this petition and of the process of this Court be served upon the respondent National Labor Relations Board as provided by Section 11 (5) of the National Labor Relations Act;

(2) That the National Labor Relations Board be directed and required, by an appropriate Order of this Court, forthwith to certify and file in this Court, pursuant to Section 10 (f) of the National Labor Relations Act, a transcript of the entire record in the proceedings, including therein the Trial Examiner's Report and findings upon the facts if any such Report there was, including all exhibits and the originals of all papers filed with the said National Board, from which the complaint was formulated and issued;

(3) That this petition for review be preferred and heard and determined expeditiously, as provided in Section 11 (i) of the National Labor Relations Act;

(4) That meanwhile and pending the hearing and determination of this petition for review and until ten (10) days after the entry of an Order by this Court upon such determination, the taking effect and any enforcement of such decision, findings and Order and the taking of any steps by the National Board or by the C. I. O. pursuant to or in furtherance of the said decision, findings and Order, shall be in all respects stayed, by an appropriate Order of this Court;

(5) That the said decision, findings and Order, and the mandatory and injunctive provisions and requirements thereof as to the petitioners, be each and in all respects, annulled, vacated and set aside;

(6) That the National Labor Relations Board be ordered and directed to dismiss the complaint and the proceedings, for want of jurisdiction; and

(7) That the petitioners shall each have such other and further relief as may be just and proper in the premises.

Dated November 18, 1937.

Consolidated Edison Company of New York, Inc., and its Affiliated Companies; Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, by Ralph H. Tapscott, President. Whitman, Ransom, Coulson & Goetz, Attorneys for Petitioners, No. 40 Wall Street, Borough of Manhattan, New York City. William L. Ransom, Pincus M. Berkson, Of Counsel.

Duly sworn to by Ralph H. Tapscott. Jurat omitted in printing.

SCHEDULE A

Memorandum of Agreement Between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, Through Its Local Union No. B830

Effective June 15th, 1937

Agreement between Consolidated Edison Company of New York, Inc. (hereinafter referred to as the "Consolidated Company"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood").

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Consolidated Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination.

2. The Consolidated Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per

week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day and December 25th) shall be limited to that which is deemed by the Consolidated Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay, and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Consolidated Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

D. W. T. G. T. P. J. A. F. F. G. B. R. H. T.
C. M. B., Jr.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Consolidated Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 15th, 1937.

Consolidated Edison Company of New York, Inc.,
by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy,
International President. Local Union No. B830,
George T. Parker, Joseph A. Fisher, Frederick G.
Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Consolidated Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

ARTICLE VIII**Safety**

11. The Consolidated Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Consolidated Company in accordance with the practice now prevailing in such department.

ARTICLE IX**Management**

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Consolidated Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

ARTICLE X**Adjustment and Arbitration**

13. Should any labor dispute or difference arise between the Consolidated Company and the Brotherhood or its members employed by the Consolidated Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Consolidated Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Consolidated Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Consolidated Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Consolidated Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

ARTICLE XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Consolidated Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

ARTICLE XII

Future Negotiations and-Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular

operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

ARTICLE XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, Consolidated Edison Company of New York, Inc., and the Brotherhood and its Local Union have executed this agreement the 15th day of June, 1937.

Consolidated Edison Company of New York, Inc.,
By R. H. Tapscott, President. International
Brotherhood of Electrical Workers, By D. W.
Tracy, International President. Local Union No.
B830, George T. Parker, Joseph A. Fisher, Fred-
erick G. Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

SCHEDULE B

Petitioners' Notice of Motion to Dismiss for Want of
Jurisdiction

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD,
SECOND REGION

Case No. II-C 224

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and
Its Affiliated Companies, Brooklyn Edison Company, Inc.,
New York & Queens Electric Light & Power Company,
Westchester Lighting Company, The Yonkers Electric
Light and Power Company, New York Steam Corporation,
Consolidated Telegraph & Electrical Subway Company,
Respondents,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affili-
ated with the Committee for Industrial Organization

Please take notice, that the above-named respondents, ap-
pearing specially and only for the purposes of the motions
hereinafter set forth, hereby jointly and severally move that
the Board dismiss the complaint and charge herein and
terminate the proceeding, upon the grounds that the Na-
tional Labor Relations Board has no jurisdiction, power or
authority over the respondents or over the subject-matter
of the complaint and charge and has no jurisdiction, power
or authority to hear and determine the same, and that the
labor practices of the respondents, alleged in the complaint,
are not shown to affect "commerce" as defined in the Na-
tional Labor Relations Act; and upon the further ground
that such matters and things as are complained of are under
the jurisdiction of the State of New York, and not of the
Federal Government, and that the Legislature of the State
of New York has, upon the recommendation of The Gov-
ernor, passed an Act entitled "An Act to amend the labor

law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

This motion is made by the respondents upon the complaint and charge, without admitting the truth or sufficiency of any of the allegations thereof, and upon the annexed affidavit, sworn to May 17, 1937, by Oscar H. Fogg, Vice-Chairman of the Board of Trustees of the respondent Consolidated Edison Company of New York, Inc.

The respondents respectfully ask that the Board grant a hearing upon this motion, and that the motion be ruled upon and determined, before a hearing is held upon the complaint served on the respondents on May 12, 1937.

The respondents, appearing only specially as above stated, move further that the Board order that the complaint and charge herein, and all proceedings instituted in respect thereto, including the motion above made, be transferred to and continued before the Board, in Washington, D. C., for the reasons that this case involves a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and requires that the hearing and decision of this motion and any further proceedings herein be directly by the Board.

The respondents, appearing only specially as above stated, move further that the Board extend their time to answer the complaint herein to five days after the final determination of this motion, and that any hearing upon such complaint set down to be held by and before the Trial Examiner on June 1, 1937, or by and before the Board, shall be

adjourned and shall not be held until at least ten days after the final determination of this motion.

Dated, New York, May 17, 1937.

Consolidated Edison Company of New York, Inc., by O. H. Fogg, Vice Chairman. Brooklyn Edison Company, Inc., by A. Augustus Low, Exec. Vice Pres. New York and Queens Electric Light and Power Company, by L. A. Coleman, Vice Pres't. Westchester Lighting Company, by E. P. Prezzano, President. The Yonkers Electric Light and Power Company, by E. P. Prezzano, President. New York Steam Corporation, by David C. Johnson, President. Consolidated Telegraph and Electrical Subway Company, by E. S. Callahan, President.

To Mrs. Elinore Morehouse Herrick, Regional Director for the Second Region, 45 Broadway, New York, N. Y. United Electrical and Radio Workers of America, Local 1212 affiliated with the Committee for Industrial Organization, 3 Albee Square, Brooklyn, N. Y. Whitman, Ransom, Coulson & Goetz, Attorneys for Respondents, No. 40 Wall Street, New York City.

**Affidavit in Support of Respondents' Motion to Dismiss
Complaint**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD,

SECOND REGION

Case No. II-C 224

In the Matter of

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and
Its Affiliated Companies, Brooklyn Edison Company, Inc.,
New York & Queens Electric Light & Power Company,
Westchester Lighting Company, The Yonkers Electric
Light and Power Company, New York Steam Corporation,
Consolidated Telegraph & Electrical Subway Company,
Respondents,**

and

**UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affili-
ated with the Committee for Industrial Organization**

STATE OF NEW YORK,

County of New York, ss:

Oscar H. Fogg, being duly sworn, deposes and says:

1. I am the Vice-Chairman of the Board of Trustees of the respondent Consolidated Edison Company of New York, Inc., and am the Vice-Chairman or a member of the Board of Directors of each of the affiliated Companies also named as respondents in the above-entitled proceeding, and am familiar with the matters and things therein involved. This affidavit is submitted in behalf of each of the named respondents, in support of their motion to dismiss the complaint herein, and for the further relief asked therein.

2. The respondents have appeared specially in this proceeding, for the sole purpose of moving jointly and severally to dismiss the complaint and charge herein and terminate the proceeding, upon the grounds, stated in their notice of motion, that the National Labor Relations Board has no jurisdiction, power or authority over the respondents or over the subject-matter of the complaint and charge and has no jurisdiction, power or authority to hear and determine the same, and that the labor practices of the respondents, alleged in the complaint, are not shown to affect "com-

merce" as defined in the National Labor Relations Act; and upon the further ground that such matters and things as are complained of are under the jurisdiction of the State of New York, and not of the Federal Government, and that the Legislature of the State of New York has, upon the recommendation of The Governor, passed an Act entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor", by which Act any such complaint and charge as to any of the respondents would be exclusively under the jurisdiction of the New York State Labor Relations Board created thereunder.

Respondents are Engaged Only in Local Operations

3. Each of the respondents Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, and New York Steam Corporation, is a local operating public utility company, organized and existing under the laws of the State of New York, engaged in supplying utility service to the public within the City of New York. The respondents Westchester Lighting Company and The Yonkers Electric Light and Power Company are local operating public utility companies, organized and existing under the laws of the State of New York engaged in supplying utility service to the public within Westchester County. The respondent Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State, engaged in carrying on business wholly within the City of New York.

4. Each of the respondents (except the Consolidated Telegraph and Electrical Subway Company) is subject to the regulatory jurisdiction and powers of the Public Service Commission of the State of New York in the respects provided by law, and is generally subject to the regulatory jurisdiction and supervision of the State of New York.

Respondents' Operations are Wholly Intra-State

5. The respondent public utility Companies transmit, distribute, sell or deliver electricity, gas or steam to cus-

tomers within the State of New York, and do not transmit, distribute, sell or deliver electricity, gas or steam in interstate commerce or across any State line. The production, transmission, distribution, sale and delivery of such electricity, gas or steam, by the respondents, take place wholly within the State of New York. All of the manufacturing plants of the respondents and all of their facilities for transmission, distribution and delivery of electricity, gas or steam, as well as their offices and other operating properties, are situated within the State of New York, and are operated and used exclusively within the State of New York. None of the respondents transmits, distributes, sells or delivers electricity, gas or steam that was generated outside the State of New York or that has crossed any State line. The system and lines of the respondents are not interconnected with the lines of any corporation supplying electricity, gas or steam which has crossed any State line.

6. Reference is made in the complaint to a physical interconnection between the electric system and lines of the respondents and the electric system and lines of the New York Power and Light Corporation, one of the Companies of the Niagara Hudson Power Corporation. None of the respondents, however, thereby receives electric energy from, or sells electric energy to, any corporation which receives electric energy from a generating or transmission system in the Dominion of Canada or anywhere outside the State of New York and which transmits or distributes electric energy of such foreign or outside origin. I am informed and believe that the New York Power and Light Corporation does not receive, transmit or sell any electricity generated outside the State of New York.

7. Reference is made in the complaint to electricity supplied by the respondents to the New York Central Railroad Company. Such energy is transmitted and delivered by one of the respondents to the New York Central Railroad Company wholly within the State of New York, and is used by the Railroad Company wholly within the State of New York. Electricity which is supplied by one of the respondents to the New York, New Haven and Hartford Railroad Company and other interstate carriers is likewise transmitted and delivered by such respondent wholly within the State of New York.

8. Reference is made in the complaint to the respondents' production and disposal of various by-products, such as coke, ammonium sulphate, and coal tar. Such by-products are manufactured wholly within the State of New York and are sold and delivered by the respondents within the State of New York, and none of the respondents transports them or causes them to be transported in interstate commerce.

9. Reference is made in the complaint to the fact that the respondents supply and deliver locally electricity, gas and steam to various concerns which are or may be themselves engaged in interstate commerce or communication. But the supply and delivery of such service to such concerns take place wholly within the State of New York, and the respondents do not participate in any interstate activities of such concerns. Although some of the materials and commodities used by some of the respondents locally are purchased in other States and are shipped to such respondents in interstate commerce, they are not used by such respondents in interstate commerce.

10. As used in the National Labor Relations Act (48 Stat. 449), under the definition in Section 2(6), the term "commerce" means

"trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country."

I am advised by counsel, and verily believe, that the labor practices of the respondents, alleged in the complaint and otherwise, do not affect, burden or interfere with "commerce" as defined in the National Labor Relations Act.

Respondents Have Been Adjudicated to be Engaged Exclusively in Intra-State Business and to do Nothing Which Burdens or Affects Interstate Commerce

11. In an action brought by the Consolidated Edison Company of New York, Inc., and other affiliated Companies, in

the United States District Court for the Southern District of New York, to obtain an adjudication as to the applicability or validity, as to them, and to enjoin the enforcement against them of the provisions and requirements of the Public Utility Holding Company Act of 1935, the defendant representatives of the Government of the United States did not deny the allegations of the bill of complaint or contest the right of the plaintiffs to a final decree in their favor. In entering a decree pro confesso as to the inapplicability of the Federal statute to various of the respondents here, the United States District Court, per Caffay, D.J., referred on July 30, 1936, to the "concession" by the Government

"that the corporate plaintiffs are engaged exclusively in intra-State business and do nothing which directly burdens or affects interstate or foreign commerce."

Final decree was entered accordingly; the Government of the United States took no appeal from such decree; and the time to appeal therefrom has expired.

Respondents are Subject Only to the Jurisdiction and Laws of the State of New York in Labor Matters

12. The respondents do not make their motion to dismiss the complaint for want of jurisdiction in the National Labor Relations Board, because of any desire or purpose to avoid or escape all governmental supervision of their labor practices. The Legislature of the State of New York, upon the recommendation of The Governor, has passed a bill identified as Assembly Introductory No. 2482, Print No. 3248, entitled "An Act to amend the labor law, in relation to establishing a labor relations board to promote equality of bargaining power between employer and employee and to diminish the causes of industrial disputes by encouraging collective bargaining, and making an appropriation to the department of labor." This Act is to be known as the "New York State Labor Relations Act". This Act, when approved by The Governor, will take effect July 1, 1937, and will subject the respondents as local, intra-State concerns to supervision and regulation by the New York State Labor Relations Board, authorized for the purpose of exercising, as to such intra-state concerns, supervisory powers and jurisdiction similar to that possessed

by the National Labor Relations Board as to interstate concerns. The granting of the present motion to dismiss the complaint would avoid a duality, if not conflict, of jurisdiction, and keep within State jurisdiction and supervision the matters which are essentially local in their nature and scope.

13. In behalf of the respondents, I submit most respectfully that the orderly determination of labor disputes will be promoted, in the public interest, if all such matters affecting the respondents are left to the governmental powers and authority of the State of New York and to the jurisdiction and powers of the Labor Relations Board of the State of New York, authorized to be created by the New York State Labor Relations Act, inasmuch as the respondents' operations are wholly within that State and are broadly subject in other respects to the regulation and supervision of the laws of the State of New York.

The Complaint and Charge are Without Merit

14. The complaint contains various allegations derived from a charge filed in behalf of a purported labor organization affiliated with the Committee for Industrial Organization. Should the respondent be called upon to answer the complaint by and before a board which has jurisdiction of such matters, the respondents will show that the allegations of the charge are without foundation in fact and wholly without merit. The termination of employment of certain employees mentioned in the complaint took place partly in November of 1935 and partly in July of 1936. None of the persons named was discharged because of his membership or non-membership in any labor organization. In any event, none of the matters alleged has since caused, or is likely to now cause, any interruption of the respondents' service to the public, or any obstruction of or impediment to the normal flow of commerce as defined in the Act. The termination of employment of a few employees, in November of 1935 and July of 1936, in the exercise of the managerial powers and responsibilities of one of the respondent Companies operating solely within the City of New York, could not possibly constitute or create any grounds for a present assumption of jurisdiction by the National Labor Relations Board.

15. I am advised and believe that this proceeding and the respondents' motions present a highly important issue as to the applicability of the National Labor Relations Act (48 Stat. 449) to the operations of the respondents in local and intra-state production, transmission, distribution, sale or delivery of electricity, gas or steam, or in the furnishing locally of intra-state facilities for the transmission and distribution of electricity, and as to the proper scope of the Federal power to regulate such operations, and that the importance of the issue, not only to the interested parties but to the public, warrants and makes advisable the hearing and decision of this motion and of any further proceedings herein, directly by the Board. The respondents accordingly move the Board that the complaint and charge herein, the respondents' motion to dismiss for want of jurisdiction, and any further proceedings in respect thereto, be transferred to and continued before the Board, in Washington, D. C.

Wherefore, in behalf of each of the respondents appearing specially for the purposes of such a motion, I respectfully ask that the complaint and proceeding herein be dismissed, as to each of the respondents, upon each of the grounds stated in the notice of motion, and also that they be granted the further relief asked for in the annexed notice of motion.

O. H. Fogg.

Subscribed and sworn to before me this 17th day of May, 1937. Marion Seitz, Notary Public, New York County. Clerk's No. 657, Register's No. 9-S-632. Commission Expires March 30, 1939. (Seal.)

SCHEDULE C

Correspondence between National Labor Relations Board and Petitioners' Counsel as to Refusal of Board to Receive Pertinent Testimony in Behalf of Petitioners

Whitman, Ransom, Coulson & Goetz,

40 Wall Street, New York

Charles S. Whitman. William L. Ransom. Robert E. Coulson. Jacob H. Goetz. Colley E. Williams. William G. Chambers. Richard Joyce Smith.

June 28, 1937.

Re Complaint of Regional Director for Second Region of National Labor Relations Board v. Consolidated Edison Company of New York, Inc., et al. (Case No. II C-224)

National Labor Relations Board, Washington, D. C.

GENTLEMEN:

By permission of the Trial Examiner in this proceeding (Mr. Robert Gates), we write to place before you its present status.

The hearings were begun on June 3rd. Testimony in behalf of the Board was concluded on Thursday, June 24th. This termination was unexpected by the respondents and their counsel; a considerable number of witnesses whose attendance had been subpoenaed or asked, were not called to the stand. The proceeding involves, as we understand it:

(1) The question of the jurisdiction of the National Labor Relations Board over these local public utility operating Companies and the matters complained of, as against the New York State Labor Relations Board (Laws of 1937, Chapter 443);

(2) The laying off or discharge of six employees, allegedly for activities in labor organizations;

(3) Alleged coercion of some employees into joining the International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor; many more than a majority of the employees of each respondent having joined a Local Union of the International Brotherhood of Electrical

Workers, and each of the respondents having entered into and executed a labor agreement with the appropriate Local Union of the International Brotherhood of Electrical Workers; and

(4) Alleged "domination" and financial aid and support of the International Brotherhood of Electrical Workers or some of its Local Unions, by the respondents or some of them.

When the testimony in support of the complaint unexpectedly ended, trial counsel for the respondents asked the Trial Examiner, upon the record, for an adjournment of the hearings until July 6th, to enable the adequate preparation and presentation of the respondents' case. This was urged as warranted, not only by the public importance of the jurisdictional question, the considerable size of the stenographic record (1301 pages), and the fact that many days of hearings had been obviated by time-saving cooperation between Regional Counsel for the Board and trial counsel for the respondents, but also in view of the situation of the respondents as to necessary witnesses.

Mr. Floyd L. Carlisle, Chairman of the Board of the Consolidated Edison Company of New York, Inc., who had been in charge of the labor negotiations and policies of the respondents, and whose statements to the employees had been referred to by practically every witness called by the Government, was and is in Europe, due to return to the United States on July 5th. Mr. Carlisle had not gone to France on a vacation or holiday, but to attend a meeting of the Executive Committee of the World Power Conference, of which he is a member, along with Mr. O. C. Merrill, Secretary of the Federal Power Commission, who is also secretary, we believe, of the World Power Conference. In 1936, the World Power Conference met in Washington, upon the invitation of the United States Government; and Mr. Carlisle and the respondents cooperated in the meeting and the entertainment of the delegates to the Conference from other lands. At the time Mr. Carlisle sailed, there seemed to be no prospect that the pending case would be concluded before his return.

Furthermore, Mr. Harold Dean, vice-president of the respondent New York and Queens Electric Light and Power Company and in charge of its engineering department, was in Milwaukee, Wisconsin, last week, to attend the annual

meeting of the American Institute of Electrical Engineers, with which he is identified. Mr. Dean was and is the necessary witness for the respondent New York and Queens Electric Light and Power Company, as to the alleged discharge of five of the six employees alleged to have been let out for labor activities, in 1935 and early 1936. Mr. Dean's presence in New York could not possibly have been secured last Thursday or Friday. At the time he left for Milwaukee, counsel for the respondents had no reason whatever to anticipate that the case would be concluded before his return, as proved to be the case. His testimony was and is indispensable to the respondents' case.

After telephonic consultation with representatives of your Board in Washington, the Trial Examiner reported that he could not grant an adjournment for receiving the testimony of any witness except Mr. Carlisle. He recessed the hearing until July 6th for that sole purpose. He reserved decision until July 6th on the question whether or not the testimony of Mr. Dean or any other witnesses (beside Mr. Carlisle) would be taken on July 6th or any other adjourned date. The Trial Examiner granted permission to respondents' counsel to present the matter meanwhile to your Board.

As the matter stands, the respondents may be denied all opportunity to present testimony in relation to the six alleged discharges of employees, as well as other pertinent matters in rebuttal, and will be limited to the testimony of Mr. Carlisle, who cannot testify upon the factual matters to be covered by Mr. Dean and others.

We respectfully submit that the situation does not warrant such a precluding of the respondents from a fair and full opportunity to present their case, in rebuttal to that presented by the Board in 1301 pages of testimony. Particularly is that so, in view of the fact that the question whether your Board has jurisdiction in the premises is as yet wholly undetermined. The respondents and their counsel have cooperated fully in the development and presentation of facts which may be pertinent to your Board's final decision. The respondents' opportunity to present their case ought not to be denied.

Very truly yours, Whitman, Ransom, Coulson &
Goetz, Attorneys for the Respondents.

National Labor Relations Board,
Washington, D. C.

July 2, 1937.

J. Warren Madden, Chairman. Edwin S. Smith. Donald Wakefield Smith.

Whitman, Ransom, Coulson & Goetz, 40 Wall Street, New York, N. Y.

Re Consolidated Edison Co.

Case No. II-C-224

GENTLEMEN:

We acknowledge receipt of your letter of June 28 requesting permission to introduce testimony in addition to that to be given by Mr. Carlisle on July 6. The Board has considered your request, and directed me to inform you that it will permit Mr. Harold Dean to testify on July 6, as well as Mr. Carlisle, but that these are the only two witnesses who will be permitted to testify on your behalf at that time. The Board is of the opinion that any other witnesses whom you may have desired to produce should have been produced upon completion of the Board's case.

Very truly yours, (Signed) Benedict Wolf, Secretary.

[Letterhead of Whitman, Ransom, Coulson & Goetz]

July 6, 1937.

Re Complaint of Regional Director for Second Region of
National Labor Relations Board v. Consolidated Edison
Company of New York, Inc., et al. (Case No. II C-224)

National Labor Relations Board, Washington, D. C.

GENTLEMEN:

Your letter of July 2nd, in reply to our letter of June 28th, is received, in relation to the above case.

We regret your ruling that witnesses other than Messrs. Carlisle and Dean may not be heard in behalf of the respondents.

On the afternoon of June 24th, the case in behalf of the Board unexpectedly was closed, without the calling of many witnesses who had been notified to attend. Because

of the absence of Messrs. Carlisle and Dean, counsel for the respondents were obliged to ask for a recess until Mr. Carlisle returned to the United States (on July 5th).

In adjourning hearings to July 6th to receive Mr. Carlisle's testimony and in reserving decision whether the testimony of any other witnesses would be taken on July 6th, the Trial Examiner fixed no intermediate date for the receiving of the testimony of any other witnesses. It was stated, in behalf of the respondents, that any such witnesses would be few and their testimony brief, less than half a day; and it did not seem to anyone that a session should be intermediately held to receive their testimony.

As the matter stands, the respondents are foreclosed; and your Board will not have the facts before it which are necessary for a fair and full determination on the merits. The Government's case began on June 3rd and was closed on June 24th. The respondents are allowed less than one day.

Many of the matters on which respondents wish, and were prepared, to present testimony were matters brought into the case at all only by amendments of the complaint, allowed during the hearings, the last of them today. For example: The termination of the employment of Stephen Solosv was not in the charge or in the complaint, and was brought in only by amendment. Respondents particularly wished to present to the Board the facts as to this matter.

The respondents respectfully except to the ruling which prevents them from placing the facts before the Board on many matters within the scope of the proceeding as broadened by amendments of the complaint during the hearings.

Very truly yours, Whitman, Ransom, Coulson & Goetz.

[Letterhead of National Labor Relations Board]

July 8, 1937.

Whitman, Ransom, Coulson & Goetz, 40 Wall Street, New York City.

Re Consolidated Edison Company of New York, Inc., et al.
Case No. II-C-224

GENTLEMEN:

We acknowledge receipt of your letter of July 6th regarding the above case, and note your remarks concern-

ing your inability to present the witnesses you desired to present, other than Mr. Dean and Mr. Carlisle.

It is our understanding that at the close of the hearing on June 24th, you expressed no desire to proceed with any witnesses other than the two above mentioned, nor were you refused at that time an opportunity to proceed with the case and call whomever you desired to examine.

Furthermore, we are informed that the Trial Examiner suggested to you at the close of the hearing on July 6th that you call witnesses in addition to Dean and Carlisle if you desired, with the understanding that a record of their testimony would be made and you could apply to the Board to have the record of that testimony made a part of the official record.

I shall be glad to learn if my understanding of the situation is incorrect.

Very truly yours, Benedict Wolf.

[Letterhead of Whitman, Ransom, Coulson & Goetz]

July 19, 1937.

Re Complaint of Regional Director for Second Region of National Labor Relations Board v. Consolidated Edison Company of New York, Inc., et al. (Case No. II C-224)

Mr. Benedict Wolf, National Labor Relations Board, Washington, D. C.

DEAR SIR:

Within limits of time and ability in the heat and humidity prevailing, I have devoted myself to the brief in behalf of the respondents, in the above-indicated proceeding, and have not sooner replied to your letter of July 8th, as to what took place before the Trial Examiner. Probably no useful purpose will be served by further correspondence about the matter, but I wish to comply with the request of the last paragraph of your letter.

Unfortunately, the stenographic transcript is not complete, as to all that took place on June 24th and July 6th, the two days referred to in your letter. As the official record shows, there were statements "off the record," on both days.

As the official record shows (S. M. 1416), the closing of the Board's testimony on June 24th was unexpected. A considerable number of witnesses whose attendance had been required were not called to the stand; otherwise the Board's case would have lasted a week more, and probably no question as to the absence of witnesses for the respondents would have arisen. Even with the termination of testimony for the Board, counsel for the Board wished to, and did, keep its case open until July 6th (S. M. 1414-15), for motions and for documentary evidence.

On June 24th, I did not know, and fairly could not be expected to know, what testimony and what witnesses I would wish to produce. Hearings had been in progress since June 10th; some twenty-eight witnesses had been called by the Board; seven Companies were involved as respondents. I did know that two of the necessary witnesses (Messrs. Carlisle and Dean) were away, Mr. Carlisle being out of the country on quasi-public business.

So I then made my application, in behalf of a fair presentation of the respondents' case, for "a recess until July 6th, at which time the remaining data desired by Mr. Moscovitz will be produced, any desired motions on either side may be made and the respondents may proceed and will proceed with any testimony in their behalf" (S. M. 1416).

At no time did I indicate that Messrs. Carlisle and Dean were or would be the only witnesses whom any of the seven respondents would wish to call; my application was for whatever testimony (S. M. 1415, 1416, 1417, 1420, 1421) seemed to be needed, upon an examination of the record. I asked leave to present our case "through such few witnesses" (S. M. 1420) as respondents needed to call.

In response to a question from the Trial Examiner, I said that I thought "that the direct examination of all witnesses in behalf of the respondents would not occupy more than a day. My personal impression is that it will occupy less" (S. M. 1421).

The Trial Examiner then ruled (S. M. 1421):

"Trial Examiner Gates: The hearing may be adjourned until the 6th of July for the purposes of taking the testimony of Mr. Carlisle. *I will reserve decision as to taking any further testimony.*

"In the meantime, respondents, if they see fit, may petition the Board for permission to introduce testimony other

than that of Mr. Carlisle in compliance with the statement you just made. * * *

"Judge Ransom: I understand that in any event, on that date, that Mr. Moscovitz and I each have a right to make any motions that we see fit and that this additional data which Mr. Moscovitz has specified on the record will be supplied, and that he may offer it if he wishes and that the testimony of Mr. Carlisle may be offered on that date under Your Honor's ruling, and that the question of whether I am to be permitted to offer any other witnesses on that date and have such testimony received is reserved for determination at that time, and I state that it is my present intention, meanwhile, to present the matter to the consideration of the Board, so that if they wish to give any further instructions to you as Trial Examiner, that may take place.

"Trial Examiner Gates: The hearing is adjourned until 10:00 A. M., July 6th)."

There was no fixing of any intermediate time for the receiving of the testimony of Mr. Dean or any other witnesses for respondents. Mr. Dean was to be back in town in the week following June 24th. Such a course was discussed, "off the record," as among the possibilities; but nothing was done about it. My belief then and now is that it was generally understood and deemed to be convenient and desirable that as the hearings were to go over to July 6th anyway, the testimony of any other witnesses for the respondents could as well be taken then, as they would be few in number and their testimony relatively short, as compared with the many days taken for the Board's case.

You are in error, I am sure, in suggesting that the Trial Examiner suggested to me, on July 6th, that I might call other witnesses to the stand (aside from Messrs. Carlisle and Dean), have their testimony taken thus informally, and apply to have it included in the official record. Such a suggestion was made by me, in an effort to have the testimony taken. At S. M. 1580, I said:

"Judge Ransom: Won't your Honor do this, just quietly take this testimony and if the Board does not want to consider it, why, about all that anybody is out of pocket is paying for the minutes and they won't be long and we won't take up much of your Honor's time, and I think the Board

would rather have the testimony than not have it, because somebody, I say with all due deference, I think somebody will be sending the case back to take this testimony and I would rather take it this week than during the Christmas holidays."

This suggestion was not accepted in behalf of the Board, although I had stated that the testimony would be "short" and the witnesses "few" (S. M. 1577). The record shows no ruling upon it. The suggestion was not very feasible, anyway, as was pointed out in the "off the record" conference which followed. The Board had limited the taking of testimony to that of Messrs. Carlisle and Dean. So I proceeded to take my exception to the limitation of the testimony, and to make an offer of proof (S. M. 1581 et seq.).

Very truly yours, Wm. L. Ransom.

[Letterhead of National Labor Relations Board]

July 22, 1937.

William L. Ransom, Esquire, Whitman, Ransom, Coulson & Goetz, 40 Wall Street, New York City.

Re Consolidated Edison Co. Case No. IL-C-224

DEAR MR. RANSOM:

I acknowledge receipt of your letter of July 19 regarding the above matter and have noted its contents. I agree with you that no useful purpose will be served by further correspondence about the matter.

Very truly yours, (Signed) Benedict Wolf, Secretary.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

No. —

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS;
International Brotherhood of Electrical Workers, Local
Union No. B-825; International Brotherhood of Elec-
trical Workers, Local Union No. B-839; International
Brotherhood of Electrical Workers, Local Union No.
B-832; International Brotherhood of Electrical Workers,
Local Union No. B-826; International Brotherhood of
Electrical Workers, Local Union No. B-828; Interna-
tional Brotherhood of Electrical Workers, Local Union
No. B-829; and International Brotherhood of Electrical
Workers, Local Union No. B-830, the said International
Brotherhood of Electrical Workers and each and all of
its said Local Unions aforesaid being Affiliates of the
American Federation of Labor, Petitioners,

VS.

THE NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION TO REVIEW AND SET ASIDE A FINAL ORDER OF THE
NATIONAL LABOR RELATIONS BOARD—Filed November 22,
1937

To the Honorable, the Judges of the United States Circuit
Court of Appeals for the Second Circuit:

International Brotherhood of Electrical Workers; Inter-
national Brotherhood of Electrical Workers, Local Union
No. B-825; International Brotherhood of Electrical Work-
ers, Local Union No. B-839; International Brotherhood of
Electrical Workers, Local Union No. B-832; International
Brotherhood of Electrical Workers, Local Union No. B-826;
International Brotherhood of Electrical Workers, Local
Union No. B-828; International Brotherhood of Electrical
Workers, Local Union No. B-829; and International
Brotherhood of Electrical Workers, Local Union No. B-830,
the above-named Petitioners, being aggrieved by the said
Final Order of said National Labor Relations Board afore-
said, pursuant to authority conferred upon them by Section
10 (f) of the National Labor Relations Act, enacted by the

Seventy-fourth Congress of the United States, approved July 5, 1935 (49 Stat. 10, 29 U. S. C. A. Sections 151, et seq.), respectfully pray this Honorable Court to review and set aside said Final Order entered and issued on November 10, 1937, by said National Labor Relations Board, in a proceeding entitled In the Matter of Consolidated Edison Company of New York, Inc., and its Affiliated Companies (hereinafter named) and United Electrical and Radio Workers of America, Affiliated with the Committee for Industrial Organization, and designated upon the Records of said Board as Case No. C-245.

—In support of said Petition, your Petitioners respectfully show:

First. Your Petitioners, the aforesaid several Local Unions No. B-825, No. B-839, No. B-832, No. B-826, No. B-828, No. B-829, No. B-830, respectively, are, each and all lawfully organized, existing and operating Labor Organizations of Wage Workers, and Constituents of the said International Brotherhood of Electrical Workers, organized, existing and operating in and throughout the several States of the United States and various Provinces of the Dominion of Canada, and particularly in the Southern District of the State of New York, in and throughout which said Southern District this Honorable Court has and exercises its lawful jurisdiction, each of said several and respective Local Unions aforesaid and their several and respective memberships of Wage Workers being subject to the jurisdiction and laws and usages of said International Brotherhood of Electrical Workers as a constituent part thereof.

The Petitioner, International Brotherhood of Electrical Workers is a lawfully-organized and existing Labor Organization with jurisdiction over each and all of its said Local Unions and Constituents, being the Petitioners aforesaid, each of said Local Unions being composed of wage workers subject to the jurisdiction, laws and usages of said International Brotherhood of Electrical Workers, as hereinabove stated.

Said International Brotherhood of Electrical Workers, Local Union No. B-825, is composed of Electrical Wage Workers in the employ and service of the Brooklyn Edison Company, Inc., an affiliated company of said Consolidated

Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical energy for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-839 is composed of electrical wage workers in the employ and service of the New York and Queens Electric Light and Power Company, an affiliated company of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical energy for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-832, is composed of Electrical Wage Workers in the employ and service of the Westchester Lighting Company and The Yonkers Electric Light and Power Company, affiliated companies of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical energy for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-826, is composed of wage workers in the employ and service of the New York Steam Corporation, an affiliated company of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing steam for heating and other purposes in the City and State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-828, is composed of electrical wage workers in the employ and service of the Consolidated Telegraph and Electrical Subway Company, an affiliated company of said Consolidated Edison Company of New York, Inc., conducting and carrying on its business of providing race-ways for electrical equipment in the City of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-829, is composed of electrical wage workers in the employ and service of the Consolidated Edison Company of New York, Inc., conducting and carrying on its business of generating and distributing electrical

energy for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Said International Brotherhood of Electrical Workers, Local Union No. B-830, is composed of wage workers and employes in the employ and service of the Consolidated Edison Company of New York, Inc., in generating and distributing gas for light and power in the State of New York and within the jurisdiction of this Honorable Court.

Second. That the respondent, National Labor Relations Board, is an administrative Board created by Act of the Seventy-fourth Congress of the United States, approved July 5, 1935, entitled "An Act to Diminish the Causes of Labor Disputes Burdening or Obstructing Interstate and Foreign Commerce, to Create a National Labor Relations Board, and for other Purposes", and is hereinafter referred to as the "National Labor Relations Act".

Third. That this Petition is filed under the provisions of sub-division (f) of Section 10 of said National Labor Relations Act.

Fourth. That on the twenty-eighth day of May, 1937, the aforesaid Brooklyn Edison Company, Inc., acting through W. P. Holcombe, its Vice President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-825 of International Brotherhood of Electrical Workers, acting through its President, Henry A. Clasen, and a Committee representing said Local Union, entered into an Agreement dated and effective May 28, 1937, with certain Riders attached thereto executed June 14, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, May 28, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-825 entered

into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said Brooklyn Edison Company, Inc., which said Agreement, so duly and lawfully authorized and entered into by said large majority of said electrical wage workers and employes of said Brooklyn Edison Company, Inc., was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the first day of June, 1937, the aforesaid New York and Queens Electric Light and Power Company, acting through L. A. Coleman, its Executive Vice President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-839 of International Brotherhood of Electrical Workers, acting through a Committee representing said Local Union, the members of said Committee being P. J. Carey, George F. Sutton, Jr., and Michael J. Pecora, entered into an Agreement dated and effective June 1, 1937, with certain Riders attached thereto executed June 14, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 1, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-839 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said New York and Queens Electric Light and Power Company, which said Agreement, so duly and lawfully authorized and

entered into by said large majority of said electrical wage workers and employes of said New York and Queens Electric Light and Power Company, was in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the twenty-eighth day of May, 1937, the aforesaid Westchester Lighting Company and the Yonkers Electric Light and Power Company, acting through E. P. Prez-zano, the President for each of the respective two companies, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-832 of International Brotherhood of Electrical Workers, acting through Fred A. Ungerer, its Temporary President, Edward F. Hayde, its Temporary Vice President, and Edmund J. Quain, its Temporary Financial Secretary, entered into an Agreement dated and effective May 28, 1937, with certain Riders attached thereto executed June 14, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, May 28, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-832 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said Westchester Lighting Company and The Yonkers Electric Light and Power Company which said Agreement, so duly and lawfully authorized and entered into by said large majority of said electrical wage workers and employes of said Westchester Lighting Company and The Yonkers Electric Light and Power Company, was, in

all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the sixteenth day of June, 1937, the aforesaid New York Steam Corporation, acting through its President, David C. Johnson, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-826 of International Brotherhood of Electrical Workers, acting through its President, William Wuest, its Vice President, Frank White, and its Recording Secretary, Henry J. Parker, entered into an Agreement dated and effective June 16, 1937, with certain Riders attached thereto executed June 16, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 16, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-826 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the wage workers and employes in the service and employ of said New York Steam Corporation, which said Agreement, so duly and lawfully authorized and entered into by said large majority of said wage workers and employes of said New York Steam Corporation, was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial in all the particulars to which said Agreement appertains, to said wage workers and employes, in whose behalf said Agreement was made.

That on the twenty-fourth day of June, 1937, the aforesaid Consolidated Telegraph and Electrical Subway Company,

acting through E. S. Callahan, its President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-828 of International Brotherhood of Electrical Workers, acting through its President, Stephen Donohue, its Vice President, William Carey, and its Recording Secretary, Joseph Daly, entered into an Agreement dated and effective June 24, 1937, with certain Riders attached thereto executed June 24, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lock-outs, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 24, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-828 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the wage workers and employes in the service and employ of said Consolidated Telegraph and Electrical Subway Company, which said Agreement, so duly and lawfully authorized and entered into by said large majority of said wage workers and employes of said Consolidated Telegraph and Electrical Subway Company, was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said wage workers and employes, in whose behalf said Agreement was made.

That on the fifteenth day of June, 1937, the aforesaid Consolidated Edison Company of New York, Inc., acting through R. H. Tapscott, its President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-829 of International Brotherhood of Electrical Workers, acting through a Committee composed of Joseph J. Delvac, William J. Eitelbach and E. F. Galschjodt,

entered into an Agreement dated and effective June 15, 1937, with certain Riders attached thereto executed June 15, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 15, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-829 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the electrical wage workers and employes in the service and employ of said Consolidated Edison Company of New York, Inc., which said Agreement, so duly and lawfully authorized and entered into by said majority of said electrical wage workers and employes of said Consolidated Edison Company of New York, Inc., was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same, and was, as hereinafter indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said electrical wage workers and employes, in whose behalf said Agreement was made.

That on the fifteenth day of June, 1937, the aforesaid Consolidated Edison Company of New York, Inc., acting through R. H. Tapscott, its President, and the said International Brotherhood of Electrical Workers, acting through its International President, D. W. Tracy, and said Local Union No. B-830 of International Brotherhood of Electrical Workers, acting through a Committee composed of George T. Parker, Joseph A. Fisher and Frederick G. Buchner, entered into an Agreement dated and effective June 15, 1937, with certain Riders attached thereto executed June 15, 1937, with respect to rates of pay, hours of work, conditions of employment, vacations, wages and classifications, sickness, disability, superannuation, retirement, lay-offs, promotions and demotions, safety, adjustment and arbitration, right of review of discharge, future negotiations and

outlawing of strikes and lockouts, which said Agreement provides that it shall remain in full force from the date of the signing thereof, June 15, 1937, until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of said Agreement or of any extension thereof, of its desire to terminate the same. The said Local Union No. B-830 entered into and executed as aforesaid the said Agreement duly and lawfully authorized by and representing a large majority of the wage workers and employes in the service and employ of said Consolidated Edison Company of New York, Inc., which said Agreement, so duly and lawfully authorized and entered into, was, in all respects, lawfully, validly, fairly and justly entered into and executed by the said parties to the same and was, as herein-after indicated, highly and unusually favorable, advantageous and beneficial, in all the particulars to which said Agreement appertains, to said wage workers and employes, in whose behalf said Agreement was made.

True and accurate copies of each of the several Agreements above respectively referred to are filed with and as part of this Petition, marked "Petitioners' Exhibit No. 1."

Fifth. Your Petitioners respectfully show that as of the approximate time when said Agreements were entered into in completed form, and more particularly on or about June 29, 1937, the number of employes eligible to membership in each of said respective Local Unions of said International Brotherhood of Electrical Workers, the total membership, the percentage of eligibles, the number of paid-up members, the number of cards signed, in each of said respective Local Unions, were as the same are particularly set forth in an Exhibit marked and known as "Respondent's Exhibit No. 16" and introduced in evidence in the course of the hearing before the Trial Examiner, in said matter of Consolidated Edison Company of New York, Inc., and its Affiliated Companies and United Electrical and Radio Workers of America, etc., before the National Labor Relations Board, Second Region, Case No. C-245 aforesaid, which said "Respondent's Exhibit No. 16" is here respectfully referred to and prayed to be taken and read by this Honorable Court as part hereof.

Furthermore, the attention of this Honorable Court is respectfully and especially requested to those provisions

and features of said Agreements which indicate and ascertain their scope (Articles I and II), provisions recognizing the special public obligations and responsibilities of said Utility Service Companies and their employes, and providing for procedures assuring against interruptions of the public service, as well as the declared purpose of said Agreements to set up such a system of collective bargaining "as will best promote and improve the economic welfare of employes of the Consolidated Company who are members of the Brotherhood, etc."; the provisions of Articles X, XI and XII of each Agreement providing for adjustment and arbitration of grievances, for the review of discharges of employes, and for the negotiation and, if need be, the arbitration of future contracts as to wages, hours and other working conditions on bases intended to preclude strikes and lockouts; and also notably the favorable, careful and exhaustive provisions for the employes' welfare with reference to hours of employment and working conditions (Article III), vacations (Article IV), and provisions for sickness, disability, superannuation, retirement, etc. of employes (Article VI), all as exceedingly fair, favorable, just and in the beneficial interest of the employes. As to "wages and classifications" (Article V) the Agreements first negotiated between the companies and the committees selected by the employes, through some of said Local Unions, provided for a five percent (5%) increase in the rates of pay of all employes receiving less than five thousand dollars (\$5,000.00) a year, excepting those who had already received increases of at least five percent (5%) in 1937; nevertheless, in subsequent negotiations between said Consolidated Edison Company and the Committee chosen by its electrical workers and employes, a further provision for additional wage increases was secured and made in behalf of said workers and employes, and this further provision was attached as a "Rider" to all the Agreements, including those theretofore executed.

The total number of electrical wage workers and employes in the employ and service of said Consolidated Edison Company of New York, Inc., and its said Affiliated Companies, Respondents in said proceeding before National Labor Relations Board, Second Region, aforesaid, and included and embraced by said Agreements hereinabove referred to, at the time said Agreements went into effect, was something over thirty thousand (30,000); and as of the

present time the number of such electrical wage workers and employes is still greater. Each and all of said Agreements have been in operation and effect between said respective Local Unions and said respective Companies ever since their execution, nearly six months ago, and each and all of the same have been and are in operation and effect to the very great and material benefit, advantage and welfare of said respective Local Unions and the Membership of each of them, as well as for the very considerable and uninterrupted service, benefit, advantage and welfare of the public, consisting of approximately ten million (10,000,000) persons beneficially served and aided in many material respects by, and in a large measure dependent upon, the public utilities supplied by said Public Service Companies and the said electrical workers and employes engaged in their service.

Sixth. That on the twelfth day of May, 1935, the Respondent, the National Labor Relations Board, through Mrs. Elinor M. Herrick, its Regional Director for the Second Region, issued and filed, and thereafter served its Complaint upon the Respondents named in said Complaint, namely the Consolidated Edison Company of New York, Inc., and its Affiliated Companies, Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation and Consolidated Telegraph and Electrical Subway Company, in the said matter of Consolidated Edison Company of New York, Inc., and its said Affiliated Companies, Respondents and United Electrical and Radio Workers of America—before the National Labor Relations Board, Second Region, aforesaid.

The said Complaint stated in substance: that it had been charged by the United Electrical and Radio Workers of America, Affiliated with the C. I. O. that the Consolidated Edison Company of New York, Inc., and its Affiliated Companies aforesaid, the Respondents, have been engaged in and are now engaging in certain unfair labor practices affecting commerce as defined in said National Labor Relations Act; and upon said charge, the National Labor Relations Board, by the Regional Director for the Second Region, alleges the several and various matters set forth in twenty-four consecutive paragraphs constituting said Complaint, as follows:

Paragraphs numbered 1-16, inclusive, embrace only allegations purporting to charge that the Respondent Company and its said Affiliate Companies were and are engaged in commerce as defined by and within the meaning of said National Labor Relations Act. The next following paragraph of said Complaint, namely paragraph 17, alleges that said Respondent Companies employ and have employed industrial spies or under-cover operatives to disclose to the Respondents the activities of their employees in and on behalf of Labor Organizations, thereby interfering with the right of their employees to form, join or assist Labor Organizations of their own choosing, or to engage in concerted activities for their mutual aid and protection, and thereby have engaged and are engaging in unfair labor practices within the meaning of Section 8 (1) of said Act. Paragraph numbered 18 alleges that the Respondent Companies, on or about November 29, 1935, discharged and refused to reinstate certain employees named Wersing, Grulich and Wagner, because they joined and assisted a Labor Organization known as Brotherhood of Utility Employees, Local 103, and engaged with other employees of the Respondent Companies in activities for their mutual aid and protection. Paragraph 19 alleges that the Respondent Companies, on or about June 19, 1936, discharged and refused to reinstate two employees named Kennedy and Emler, because they engaged with other employees in activities for their mutual aid and protection. Paragraph 20 alleges that by said discharge of said five employees aforesaid, the Respondent Companies interfered with, restrained and coerced their employees in the exercise of rights guaranteed in Section 7 of said Act, and by such discharges have engaged and are engaging in unfair labor practices within the meaning of Section 8 (1) of said Act. Paragraph 21 of said Complaint alleges that by the discharge of said five employees aforesaid, the Respondent Companies discriminated and are discriminating in regard to the hire and tenure of employment of said five employees, and discouraged and are discouraging membership in or assistance to Labor Organizations, and thereby engaged and are engaging in unfair labor practices within the meaning of Section 8 (3) of said Act. Paragraph 22 of said Complaint alleges that the Respondent Companies have, since April 12, 1937, interfered and are interfering with, restraining and coercing their employees in the exercise of their rights to form, join or assist Labor Organiza-

tions of their own choosing, and are contributing financial or other support to the International Brotherhood of Electrical Workers by (1) allowing employes of the Respondents to solicit membership in said Labor Organization during working hours and on the Respondents' property, (2) compensating such employes while engaged in such solicitation, (3) furnishing office space and other financial assistance to such solicitors, while refusing such privileges or assistance to the United Electrical and Radio Workers of America, Local 1212, and by coercing their employes to join or assist the International Brotherhood of Electrical Workers; and "did thereby and are thereby engaging in unfair labor practices within the meaning of Section 8 (1) and (2) of said Act." Then, follow the final two paragraphs of said Complaint, to which the attention of this Honorable Court is respectfully requested, which said paragraphs are as follows:

"23. The activities of the respondents set forth above in paragraphs '16' to '21,' inclusive, occurring in connection with the operations of respondents described above in paragraphs '1' to '16,' inclusive, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and tend to lead to labor disputes hindering and obstructing commerce and the free flow of commerce.

"24. The aforesaid acts of the respondent enumerated above in paragraphs '16' to '21,' inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act."

The said Complaint then concludes as follows:

"Wherefore the National Labor Relations Board on the 12th day of May, 1937, issues its complaint against the Consolidated Edison Company of New York, Inc., and its affiliated companies, Brooklyn Edison Company, Inc., New York & Queens Electric Light & Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph & Electrical Subway Company, Respondents herein."

Appended to said Complaint was a "Notice of Hearing" assigned to take place on June 1, 1937, at ten o'clock A. M.,

at 45 Broadway, New York, New York. The said Complaint, with said Notice of Hearing, was signed on May 12, 1937, by Mrs. Herrick, Regional Director for the Second Region. On May 25, 1937, Mrs. Herrick, Regional Director, signed and caused to be served upon the said Respondent Companies an "*Amended Notice of Hearing*" postponing the hearing to the third day of June, 1937, at ten o'clock A. M., at the Auditorium of the New York County Lawyers Association, 14 Vesey Street, New York, New York.

Seventh. Your Petitioners, further, respectfully show that the said Complaint as first and originally issued by said Board through its said Regional Director and served upon said Respondent Companies did not allege that the matters and facts stated in paragraph 22 affected interstate commerce, but, on the contrary, paragraphs 23 and 24 of said original Complaint, hereinabove literally recited, specifically alleged that the activities of the Respondents set forth in paragraphs 16 to 21, inclusive, occurring in connection with the operations of Respondents described in paragraphs 1 to 16, inclusive, have a close, etc., relation to commerce among the several States and tend to lead to labor disputes hindering and obstructing commerce and its free flow; and that the aforesaid acts of the Respondent enumerated above in paragraphs 16 to 21, inclusive, constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2) and (3) and Section 2, subdivisions (6) and (7) of said Act. In other words, the statements in paragraph 22 of favoritism upon the part of the Respondent Companies toward the International Brotherhood of Electrical Workers, are not embraced in or connected with the substantive and essential charges in the Complaint, but are plainly omitted therefrom. Said original Complaint and the Notice of Hearing and the Amended Notice of Hearing, of and upon said Complaint, were never served by said National Labor Relations Board or by its Regional Director for the Second Region, or caused by them or either of them to be served, upon your Petitioner, the International Brotherhood of Electrical Workers, at its well and generally known Office in the International Brotherhood of Electrical Workers Building, at No. 1200 Fifteenth Street, N. W., in Washington, District of Columbia, or at any of its offices, nor upon any of your Petitioners, at said several Local Unions, hereinabove respectively mentioned, as com-

posed of electrical workers and employes in the service of or in any manner associated or connected with said Consolidated Edison Company of New York, Inc., or any of its said Affiliated Companies. On the contrary, said original Complaint, Notice of Hearing and Amended Notice of Hearing were mailed, or caused to be mailed by said Board and its said Regional Director to the Office, No. 130 East Twenty-fifth Street, New York City, New York, of Local Union No. 3, composed of employes of electrical contractors, and having no connection or association with any of said Respondent Companies, and having not the slightest connection or concern with any of the matters or charges alleged in said Complaint or with any of said Local Unions of electrical workers and employes in the employ and service of any of said Respondent Companies, and having no interest in, relation to, or concern with the said Agreements entered into by and between said respective Respondent Companies, said International Brotherhood of Electrical Workers, and said respective Local Unions aforesaid, or in or with the relations between said International Brotherhood and said Local Unions and said Respondent Companies. At said Office, 130 East Twenty-fifth Street aforesaid, of said Local Union No. 3, an alleged service of said Complaint was attempted to be acknowledged by one D. Kaplan, a member of said Local Union No. 3, and not an officer, representative or agent of your Petitioner, International Brotherhood of Electrical Workers, or of any of your Petitioners herein, and not connected in any way with any of said Respondent Companies, and not involved or interested in or concerned or connected with any of the matters, acts or things mentioned or complained of in said Complaint; and not authorized, competent or qualified, in any respect or manner, to accept or acknowledge service of any legal process or of any proceeding for or upon the part or behalf of said International Brotherhood of Electrical Workers or any of said Local Unions, the Petitioners herein. The Amended Notice of Hearing of May 25, 1937, was also mailed to said office of said Local No. 3 at 130 East Twenty-fifth Street aforesaid.

Subsequently, said original Complaint, which, as aforesaid, omitted the allegations of paragraph 22 aforesaid from the material and substantial complaint which it pre-

ferred against said Respondent Companies, was for the first time, in a Third Amended Complaint, amended so as to make the allegations in paragraph 22 referable to interstate commerce and to alleged unfair labor practice proscribed by the Act. This was the first charge or accusation, so as aforesaid made in its Third Amended Complaint, by the said Board against any of the Respondent Companies of any alleged unfair practice under said Act with reference to the International Brotherhood of Electrical Workers; and this was done, for the first time, as aforesaid, after the hearing of and upon said Complaint, had been in progress for a number of days and the most important testimony for the Board in the Record, particularly that upon which the Labor Board in its said final decision and order mostly relied, namely the testimony of the C. I. O. witness, Harold Straub, and certain others, had been taken in several sessions of the hearing conducted by the Trial Examiner. Reference is here respectfully made to pages 518-523 of the Record of the proceedings at the hearing before the Trial Examiner, a true copy of which said pages, for the convenience of this Honorable Court, is filed herewith marked "Petitioners' Exhibit No. 2."

Eighth. Your Petitioners here, further, respectfully show that following said Amendment of said Complaint, as shown by said Third Amended Complaint, and by which said Amendment, for the first time the reference in said paragraph 22 to the alleged attitude and action of said Respondent Companies toward said International Brotherhood of Electrical Workers was brought within and made a part of said Complaint of unfair practices upon the part of said Respondent Companies under said Act, there was no service whatsoever of said Complaint as so amended, or of any notice of hearing thereupon, made, or caused or attempted to be made, by said Board, or its said Regional Director for the Second Region, or its said Trial Examiner conducting said hearing, upon your Petitioner, International Brotherhood of Electrical Workers, or upon any of your Petitioners, said respective Local Unions of electrical workers and employes in the employ and service of said Respondent Companies, respectively, or any of them.

And your Petitioners respectfully show that upon and in the situation, so as above particularly described and ascertained, and without any change therein and without any amendment or supplementary proceeding by way of notice

to or service of any proceeding whatever upon your Petitioners, or any of them, the said hearing proceeded until it was finally closed before said Trial Examiner, and on or about September 29, 1937, by Order of said National Labor Relations Board, was transferred to it at Washington, D. C.; that from the inception, issuing and filing of said original Complaint in said proceeding until said close of the hearing and proceeding before said Trial Examiner, and until after said proceeding had been, by said Order of the Board, "transferred and continued" before it at Washington, no notice thereof, and no copy of said Complaint and Charge, or of any Amended Complaint, and no Notice of Hearing or Amended Notice of Hearing upon any Amended Complaint, was ever served or caused to be served by said National Labor Relations Board or by its Regional Director for said Second Region, or by its said Trial Examiner, upon any of your Petitioners or upon any officer or official representative of any of them.

After said transfer by said Order of said Board of September 29, 1937, of said proceeding to and before it, not any of the Petitioners received any word or intelligence from said Board until on the tenth day of November, 1937, the following communication from said National Labor Relations Board, Washington, D. C., dated said November 10, 1937, was received from Benedict Wolf, Secretary of said Board, to wit:

"National Labor Relations Board

Washington, D. C., November 10, 1937.

"Mr. Daniel W. Tracy, 1200 15th Street, N. W., Washington, D. C.

"Re Consolidated Edison Company, Inc., and Its Affiliated Companies. Case No. C-245"

"DEAR SIR:

"We are enclosing herewith a copy of the Board's Decision and Order in the above-entitled case.

"Very truly yours, (Signed) Benedict Wolf, Secretary.

"N. L. R. B. 92."

Said communication, as stated therein, was accompanied by a copy of said Board's said Decision and Order, ren-

dered, and entered and issued by it on said tenth day of November, 1937. The said Communication and Decision and Order of said Board are filed herewith as part hereof marked "Petitioners' Exhibit No. 3."

Ninth. Your Petitioners, furthermore, respectfully show that in said Complaint and Proceeding before said National Labor Relations Board, Case No. C-245 aforesaid, the only Defendants or Respondents in said cause, were and are the several Companies named therein, as aforesaid, as Respondents. The other party named in the title thereto, namely the United Electrical and Radio Workers of America, Affiliated with the Committee for Industrial Organization, preferred the charges upon which said Complaint was based. The said proceeding upon said Complaint was instituted and conducted solely and only against the Respondent Companies, aforesaid, therein. Not one of your Petitioners was made a party, defendant or respondent, to said proceeding. Not one of them was, in law or in fact, a party to said proceeding. Not only did not any one of them receive from said Board, Regional Director or Trial Examiner any copy of the Complaint or of any Amended Complaint or Notice of Hearing or Amended Notice of Hearing therein, but they were not served or affected with any summons, process or requirement whatsoever issued to or laid upon them, according to the Law of the Land and their fundamental and constitutional rights, to appear and defend themselves as parties to said proceeding against any denial, forfeiture, deprivation or destruction of their personal and property rights secured to them by their several respective Agreements aforesaid, heretofore filed herewith as Petitioners' Exhibit No. 1. In other words, at no time was any one of your Petitioners herein ever summoned to appear as a party to said proceeding in any proper, necessary, lawful or constitutional manner, according to the established practice and requirements of all tribunals and courts of justice dealing with and disposing of personal and property rights in accordance with the Law of the Land and the requirements of our Constitutional Systems and particularly of the Constitution of the United States. Nevertheless, and despite the premises, as appears in said Decision and Order of November 10, 1937, of said National Labor Relations Board, and as hereinafter more particularly pointed out, the said personal, property and contrac-

nal rights of your Petitioners were and are lawlessly and ruthlessly abrogated and destroyed by said Order of said Board without any of your Petitioners being made parties to said proceeding, and without even service by said Board or its Regional Director or Trial Examiner of said Complaint or Amended Complaint or Notice of Hearing or Amended Notice of Hearing, upon any of them from the beginning to the end of the hearing and determination of said cause, in violation of the Constitution of the United States and the Amendments thereto specifically protecting and securing to your Petitioners their rights and immunities aforesaid.

Tenth. Your Petitioners respectfully and particularly show that the said Board's said Order of November 10, 1937, peremptorily directs and requires that said Respondent Companies and each of them, cease and desist from:

(f) Giving effect to their said contracts with the International Brotherhood of Electrical Workers, and

(g) Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees,

thereby abrogating and annulling said Agreements by prohibiting their recognition, effect, performance or fulfilment. The said destructive effects of said Order are further attempted to be enforced by paragraph 2-c thereof directing, as "affirmative action," said Respondent Companies to

(c) Post immediately notice to their employees in conspicuous places, through their offices, buildings, plants and places of employment, stating (1) That the respondents will cease and desist in the manner aforesaid; (2) That the respondents' employees are free to join or assist any Labor Organization for the purpose of collective bargaining with the respondents; (3) That the respondents will bargain collectively with any Labor Organization entitled thereto. The said Order not only abrogates and annuls the said contracts between your Petitioners, respectively, and said Companies, respectively, but, in effect, calls for new contracts to be substituted in their place, despite the fact, as your Petitioners respectfully represent, that the said contracts so entered into by your Petitioners are still in effect and operation and will continue to be until the prescribed end of their respective terms.

Eleventh. In contra-distinction from and contrast with the provisions of said Order abrogating and annulling said Agreements by prohibiting their recognition, existence, performance and fulfillment, as shown in the last preceding paragraph hereof, your Petitioners respectfully and particularly direct the attention of this Honorable Court to the impressive fact that said Complaint or Amended Complaint, upon which said Order was entered and issued, did not contain or make the slightest reference to any of the said Agreements so abrogated, stricken down and destroyed by said Order as aforesaid. Nor did said Complaint or Amended Complaint contain or make any reference to or raise any question as to representation of said electrical workers and employes in the employ and service of any of said Respondent Companies for the purpose of collective bargaining with any of said Respondent Companies as employers, such subjects being nowhere in said Complaint or Amended Complaint referred to as in issue or under consideration or subject to adjudication upon or by virtue of said Complaint or Amended Complaint. The said Complaint or Amended Complaint was not brought by said Board or its Regional Director under, nor did it purport by word or intention to be brought under, Section 9 of said National Labor Relations Act, the said Section 9 being nowhere mentioned or referred to in said Complaint or Amended Complaint. The learned Attorney for said Board repeatedly stated during the hearing, as hereinafter set forth, that there was no question of representation involved in said case or proceeding. From the beginning to the end of said Complaint or Amended Complaint there is no statement, charge or intimation and certainly no notice or premonition that the said Agreements or their legality, existence or operation, or any matter of representation for collective bargaining, or collective bargaining at all, were in issue or raised for determination and adjudication by the Board. The specific and particular allegations and charges in and of the said Complaint and Amended Complaint, definitely phrased and ascertained, have been hereinabove fully detailed. As charges of legal offenses, their scope, according to settled and familiar principles, may not be extended beyond their plain and proper import. They raise no such questions, and present no such exceedingly grave and serious matters for determination and adjudication.

eration as the Board in its said Final Order went far out of its way, not only to lug into the case, but to make the very gist and gravamen of the case and the substance and burden of its Order. Your Petitioners, accordingly, respectfully and earnestly complain that the said Complaint and Amended Complaint, upon which said Final Order of said Board was passed, afforded no legal basis or justification for said Final Order in the particular respects hereinabove specially referred to, namely the striking down and cancellation of said Agreements and the determinations and orders with respect to representation, collective bargaining and the substitution of other Agreements for those entered into as aforesaid by your Petitioners with said Respondent Companies, without the slightest reference in said Complaint or Amended Complaint to said serious subject matters which said Order of said Board attempts to dispose of as appears therein.

Twelfth. Your Petitioners also respectfully show unto Your Honors that the said Respondent Companies, before filing their Answer to the Complaint and Amended Complaint in said proceeding before said National Labor Relations Board, Second Region, Case C-245, aforesaid, moved to dismiss said Complaint as well as the Charge therein and terminate said proceeding, upon the grounds that the said National Labor Relations Board had no jurisdiction, power or authority over said Respondents or over the subject matters of said Complaint, Amended Complaint and Charge, and no jurisdiction, power or authority to hear and determine the same, and that the labor practices of said Respondent Companies, alleged in said Complaint, Amended Complaint and Charge, were not shown therein to affect "commerce" within the meaning of said Act; and upon the further ground that such matters and things as were and are so complained of and charged, were and are under the jurisdiction of the State of New York and within the scope and purview of the Legislative Act of said State upon and respecting said subject matters and things so as aforesaid complained of and charged. And by competent deposition duly sworn to, the said Respondent Companies in said Case C-245 verified their Motion aforesaid and showed that they, said Respondent Companies and the electrical workers and employes in their employ and service, and referred to and involved in said Complaint, Amended

Complaint and Charge, were engaged only in intra-state commerce and not in interstate or foreign commerce within the Commerce Clause of the Federal Constitution and within the meaning and effect of said National Labor Relations Act; and also that it had been adjudicated in the United States District Court for the Southern District of New York, that said Respondent Companies were engaged exclusively in intra-state business and not in interstate business and that the conduct and operation of their business did not burden or affect interstate commerce. The determination of said Motion was postponed by said Board and its Trial Examiner by its direction until after the hearing and until the conclusion of said proceeding. The Respondent Companies, reserving their rights with respect to said denial of jurisdiction upon the part of said Board in the premises, reasserted said objection to, and denial of said jurisdiction, upon said grounds, in their Answer to said Complaint.

Your Petitioners respectfully show, upon information and belief, that the said National Labor Relations Board is without jurisdiction, power or authority over said Respondent Companies, and over your Petitioners, electrical wage workers and employes in their service and employ as aforesaid, with respect to any of the matters, things acts or subject matters alleged, charged and complained of in said Complaint, Amended Complaint and Charge in said Proceeding and Case C-245, upon and with respect to which, said National Labor Relations Board passed and entered its said Final Order herein complained of, for, all and singular, the reasons assigned in denial of any such jurisdiction, power and authority in said Board in said Motion to Dismiss, affidavit and Answer of said Respondent Companies hereinabove referred to and particularly for the reason, which your Petitioners allege upon information and belief, that not any of the said Respondent Companies nor your Petitioners as electrical wage workers and employes employed and engaged in their service, are engaged, employed and acting in interstate commerce or foreign commerce within the Commerce Clause of the Constitution of the United States and within the meaning of said term "Commerce" as used and defined in said National Labor Relations Act. Your Petitioners, accordingly, respectfully represent, that said Board, being entirely without jurisdic-

tion, power or authority in the premises, its said Order of November 10, 1937, aforesaid, herein complained of, is unauthorized, unconstitutional, nugatory and void.

Thirteenth. Moreover, your Petitioners respectfully show that said provisions of said Order annulling and destroying said Agreements as aforesaid were not based upon the slightest evidence or supported by any testimony at all in the Record of the Proceedings in said Case before said National Labor Relations Board, that the said several Agreements were not authorized and entered into by a majority of the electrical workers and employes of said respective Respondent Companies; but, on the contrary, the positive testimony, afforded by said "Respondent's Exhibit No. 16," hereinabove referred to, was and is to the effect that said respective Agreements were entered into by large majorities of the electrical workers and employes in said several Respondent Companies.

Fourteenth. Your Petitioners, furthermore, respectfully show that it was on various occasions repeatedly stated by the learned counsel for the Board and its Regional Director, in said hearing and proceeding before said Trial Examiner, on behalf of the Board, that no question of representation was or is involved in said Complaint or said proceeding thereon (Rec. 190, 521). The said Complaint manifestly was not and is not based in any respect upon Section 9 of said National Labor Relations Act. The subject and question of representation for collective bargaining, which the said Order of said Board makes its principal substance and burden, were declared by the said Attorney for the Board eliminated from the case. The said Final Order of the Board, your Petitioners respectfully submit, is not only in disregard and contravention of said declarations and disclaimers upon the part of the Board's own able Counsel, but arrayed against the provisions of the Federal Constitution prohibiting the deprivation of liberty or property without due process of law, and the denial of the equal protection of the laws, and the impairment of the obligation of contracts, is in its despotic defiance of the most valuable rights of the Citizen indefeasibly guaranteed by the Organic Law, a species of dictatorial autocracy of which this Country, fortunately, has seldom, if ever, witnessed the like.

In fine, your Petitioners respectfully represent that, the said Order destroying as aforesaid the property, contracts and personal rights of your Petitioners presents to this Honorable Court the bald spectacle of an administrative tribunal suspending the Constitution of the United States, the Common Law of the Land, the principles of natural justice and the rights and immunities of American citizens, and overturning every landmark of liberty ordered and guarded by law.

Fifteenth. Your Petitioners, moreover, respectfully show that said hearing of said cause before said Regional Director and Trial Examiner on behalf of said National Labor Relations Board was not a fair and lawful one in that almost every variety of unlawful testimony, including hearsay, rumor, remote and secondary reports and conversations, not constituting, in any established or recognized sense, legal evidence, was admitted against said Respondent Companies and also, in the view of said Final Order of said Board, against the valuable and substantial personal and property rights of your Petitioners omitted as legal defendants, although, by law and constitutional guarantee, indispensable parties to any proceeding to deny and destroy their said personal and property rights.

Sixteenth. Your Petitioners respectfully represent that the said Final Order of said National Labor Relations Board passed and entered on November 10, 1937, is illegal, unconstitutional and void for the following reasons:

A. The said National Labor Relations Board was without jurisdiction, power or authority under the Constitution of the United States and under said National Labor Relations Act to pass or enter said Order, because the Respondent Companies in said proceeding and Case C-245, and your Petitioners as their employees as aforesaid, were not engaged in interstate or foreign commerce, but only in intrastate commerce, within the meaning of the Commerce Clause of the Constitution of the United States and of the term "commerce" in said National Labor Relations Act and, therefore, had no jurisdiction, power or authority over the Complaint, Amended Complaint and Charge, aforesaid, in said Proceeding and Case C-245, or the parties or such matters, things, actions and alleged practices therein mentioned and referred to or over your Petitioners as employees of

said Respondent Companies or their Agreements aforesaid, or their relations with said Respondent Companies in the employment and service of your Petitioners in the business carried on by said Respondent Companies.

B. The said Board may not be and is not legally authorized or empowered to impair, abrogate, annul and destroy existing contracts, as it has attempted by its said Order to annul and destroy the said Contracts of your Petitioners and their personal and property rights therein. Said attempted exercise of power so to destroy contracts and property rights is inhibited by the Law of the Land as expressed in the Constitution of the United States and the Amendments thereto.

C. The Constitution of the United States expressly prohibits the impairment of the obligation of contracts by any of the States of the Union, and the spirit and effect of this inhibition is implicit in the Federal Constitution and the Amendments to it against the Federal Government itself.

D. The National Labor Relations Board is without constitutional authority in any proceeding before it to abridge, annul or destroy the contractual, personal or property rights of any citizen, or body of citizens, without lawful notice and without lawfully and actually making, and summoning them as, a party or parties to the proceeding, thus bringing them into Court, as parties to the proceeding, before any judgment or determination may be made therein abridging, denying, impairing or taking away their substantial rights of person and property. These are indefeasible rights and immunities guaranteed by the fundamental law to every citizen in a free land. Said Order of said Board violates these principles to the irreparable injury of these Petitioners.

E. The proceedings before said Regional Director and conducted by said Trial Examiner at and in the hearing of said Complaint were unjudicial, unjust and violative of the basic principles of evidence constituting a part of due process of law, and embraced in the equal protection of the laws, and, as the basis of said Order of said Board of November 10, 1937, were illegal and void.

F. The said Order of said Board of November 10, 1937, as well as the proceedings conducted by said Trial Exam-

ner under the authority and direction of said Regional Director for the said Second Regional District and under the authority of said National Labor Relations Board, constituted an unequal, discriminatory, confiscatory and illegal application and administration of said National Labor Relations Act against these Petitioners, and in deprivation of their personal and property rights, which said application and administration of said Act are, under the Constitution of the United States and the Amendments thereto, illegal, unconstitutional and void.

Seventeenth. The Petitioners respectfully show that if said Order of said National Labor Relations Board of August 30, 1937, be permitted to stand and be carried out as valid, and the said contracts of your Petitioners be set aside and invalidated, and their rights thereunder annulled and destroyed, as aforesaid, they will suffer and sustain irreparable loss, injury and damage, for which they would be without remedy in a Court of Law, and which said loss, injury and damage, your Petitioners respectfully represent, it is proper and lawful for this Honorable Court to prohibit and prevent; and, further, that unless said Final Order be ✓ set aside by this Honorable Court, as hereinafter prayed, substantial and irreparable injury to your Petitioners and to their personal and property rights will be unavoidably imposed and inflicted upon them.

Wherefore, your Petitioners respectfully pray this Honorable Court to review the said Decision and Order of November 10, 1937 of said National Labor Relations Board and enter a Decree setting said Order aside as unauthorized, unconstitutional, null and void, and that, pending such review and Decree, said Order may be stayed, and that such

other and further decrees may be made herein as to this Honorable Court may seem just.

And as in duty, etc.

International Brotherhood of Electrical Workers, by D. W. Tracy, International President. International Brotherhood of Electrical Workers, Local Union No. B-825, by John J. Corrigan, Its President. International Brotherhood of Electrical Workers, Local Union No. B-839, by George F. Sutton, Jr., Its President. International Brotherhood of Electrical Workers, Local Union No. B-832, by Fred A. Ungerer, Its Temp. President. International Brotherhood of Electrical Workers, Local Union No. B-826, by William Wuest, Its President. International Brotherhood of Electrical Workers, Local Union No. B-828, by Stephen Denohue. International Brotherhood of Electrical Workers, Local Union No. B-829, by William P. Ganley. International Brotherhood of Electrical Workers, Local Union No. B-830, by John McKeon. Isaac Lobe Straus, Munsey Bldg., Baltimore, Md., Solicitors for the Petitioners. Claude A. Hope and Delafield, Sharne & Marsh, 20 Exchange Place, New York.

Duly sworn to by D. W. Tracy et al: Jurats omitted in printing.

PETITIONERS' EXHIBIT No. 1

Memorandum of Agreement Between Brooklyn Edison Company, Inc., and the International Brotherhood of Electrical Workers, Through Its Local Union No. B825

Effective May 28, 1937

Agreement between Brooklyn Edison Company, Inc. (hereinafter referred to as the "Brooklyn Company"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of con-

ducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Brooklyn Company who are members of the Brotherhood and enable the Brooklyn Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Brooklyn Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Brooklyn Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Brooklyn Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Brooklyn Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Brooklyn Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40)

hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Brooklyn Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Brooklyn Company or any other Company of the Brooklyn Edison Company, Inc., on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that two weeks'

vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 14, 1937.

W. P. H. J. C. A. D. W. T. H. A. C. P. J. B.
H. J. G. J. M. C.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Brooklyn Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of 5% in the wages to be made, effective July 1, 1937, of all employees receiving less than \$5,000 per annum with the exception of those who have received increases between January 1, 1937 and July 1, 1937. Where increases have been made since January 1, 1937 which were less than 5%, they will be increased to equal 5%.

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases

provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 14, 1937.

Brooklyn Edison Company, Inc., by W. P. Holcombe,
Vice President. International Brotherhood of
Electrical Workers, by D. W. Tracy, International
President. Local Union No. B825, by H. A. Clasen,
Peter J. Bernard, James M. Curry, Haym J. Gill.

Attest: John C. Arnell.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, Etc.

8. The Brooklyn Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lake Farms, Inc., the present medical service, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Brooklyn Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Brooklyn Company further states (but without modifying the voluntary and non-obligatory character of its provisional Retirement Plan for Employees) its present intention to continue for the term of this contract, without reference to the provisions of the United States Social Security Act, its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b),

(c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Brooklyn Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Brooklyn Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Brooklyn Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Brooklyn Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Brooklyn Company and the Brotherhood or its members employed by the Brooklyn Company, as to the meaning, application or operation of any provisions of this agree-

ment, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference.

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Brooklyn Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Brooklyn Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Brooklyn Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Brooklyn Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other

matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Brooklyn Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Brooklyn Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose

of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Brooklyn Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Brooklyn Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, Brooklyn Edison Company, Inc., and the Brotherhood and its Local Union have executed this agreement the 28th day of May, 1937.

Brooklyn Edison Company, Inc., by W. P. Holcombe, Vice President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B825, by Henry A. Clasen, President; James M. Curry, Peter J. Bernard, Haym J. Gill.

Attest: John C. Arnell.

Memorandum of Agreement Between New York and Queens
Electric Light and Power Company and the International
Brotherhood of Electrical Workers, Through Its Local
Union No. B839

Effective June 1st, 1937

Agreement between New York and Queens Electric Light and Power Company (hereinafter referred to as the "Queens Company") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Queens Company who are members of the Brotherhood and enable the Queens Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Queens Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Queens Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Queens Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint

or coercion, by the Queens Company of any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Queens Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Queens Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Queens Company or any other Company of the Consolidated Edison

System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936, and prior to January 1, 1937.

Executed, June 14, 1937.

P. J. C. C. F. S., Jr. M. J. P. D. W. T. L. A. C.
F. S.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Queens Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the exception of those who have received increases between January 1, 1937 and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 14, 1937.

New York and Queens Electric Light and Power Company, by L. A. Coleman, Executive Vice President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B839, P. J. Carey, George F. Sutton, Jr., Michael J. Pecora.

Attest: F. Seinecke.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Queens Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Queens Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Queens Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of

this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Queens Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Queens Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Queens Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or, to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Queens Company, provided that this will

not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Queens Company and the Brotherhood or its members employed by the Queens Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Queens Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Queens Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Queens Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the

board. The decision of a majority of the members of the board shall be final and binding upon the Queens Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof, involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and

without just cause, the Queens Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Queens Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Queens Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Queens Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or unemployment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other

party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, New York and Queens Electric Light and Power Company and the Brotherhood and its Local Union have executed this agreement the 1st day of June, 1937.

New York and Queens Electric Light and Power Company, By L. A. Coleman, Executive Vice President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B839, P. J. Carey, George F. Sutton, Jr., Michael J. Pecora.

Attest: F. Seinecke.

Memorandum of Agreement Between New York Steam Corporation and the International Brotherhood of Electrical Workers, Through Its Local Union No. B826

Effective June 16th, 1937

Agreement between New York Steam Corporation (hereinafter referred to as the "Steam Corporation") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Steam Corporation who are members of the Brotherhood and enable the Steam Corporation efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted steam service to its customers, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Steam Corporation who are members of the Brotherhood

and are engaged in operations essential to the furnishing of steam service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Steam Corporation recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Steam Corporation recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Steam Corporation or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Steam Corporation time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th; Labor Day,

October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Steam Corporation to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay, and in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Steam Corporation or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936, and prior to January 1, 1937.

Executed, June 16, 1937.

W. W. F. W. H. J. P. D. W. T. D. C. J.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Steam Corporation, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 16, 1937.

New York Steam Corporation, by David C. Johnson, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B826, William Wuest, President. Frank White, Vice President. Henry J. Parker, Rec. Secretary.

Attest: Wm. J. Baldwin, Jr., Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Steam Corporation will continue in force, for the duration of this agreement but without commitment or lia-

bility thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Steam Corporation will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Steam Corporation further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Steam Corporation has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Steam Corporation shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary

for the proper protection of employees in any department from injury shall be provided by the Steam Corporation in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Steam Corporation, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Steam Corporation and the Brotherhood or its members employed by the Steam Corporation, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Corporation or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Steam Corporation; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided; the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Steam Corporation and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Steam Corporation may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Steam Corporation, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Corporation or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to

and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Steam Corporation shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Steam Corporation and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Steam Corporation has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Steam Corporation is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service and, as such a public utility, is

unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same. In the event that, while this agreement is in force, the Steam Corporation shall be merged or consolidated into the Consolidated Edison Company of New York, Inc., this agreement shall nevertheless, until its expiration or termination, be continued in force and shall apply to the steam operations and employees of the merged corporation.

In witness whereof, the New York Steam Corporation and the Brotherhood and its Local Union have executed this agreement, the sixteenth day of June, 1937.

New York Steam Corporation, by David C. Johnson, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B826, William Wuest, President. Frank White, Vice President. Henry J. Parker, Rec. Secretary.

Attest: Wm. J. Baldwin, Jr., Secretary.

Memorandum of Agreement Between Westchester Lighting Company and The Yonkers Electric Light and Power Company and the International Brotherhood of Electrical Workers, Through Its Local Union No. B832

Effective May 28, 1937.

Agreement between Westchester Lighting Company and The Yonkers Electric Light and Power Company, parties

of the first part (hereinafter referred to collectively as the "Westchester Companies"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Westchester Companies who are members of the Brotherhood and enable the Westchester Companies efficiently and economically to perform their obligations as public utilities and to furnish uninterrupted electric and gas service in their territories, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Westchester Companies who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric and gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Westchester Companies recognize the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Westchester Companies recognize, and will not interfere with, the right of their employees to become members of the Brotherhood, and agree that there shall be no discrimination, interference, restraint or coercion, by the Westchester Companies or any of their agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the

Brotherhood and also agrees not to solicit membership on the Westchester Companies' time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Westchester Companies to be essential to their performance of their obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Westchester Companies or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after Sep-

tember 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Westchester Companies, in order to insure orderly operation and adequate and continuous service to the public.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936, and prior to January 1, 1937.

Executed, June 14, 1937.

F. A. U. E. J. Q. E. F. H. D. W. T. E. P. P.
A. L. C.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of 5% in the wages to be made effective July 1, 1937, of all employees receiving less than \$5,000 per annum with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than 5%, they will be increased to equal 5%.

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees

receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 14, 1937.

Westchester Lighting Company, by E. P. Prezzano,
President. International Brotherhood of Electrical
Workers, by D. W. Tracy, International President.
Local Union No. B832, by Fred A. Ungerer, Edward
F. Hayde, Edmund J. Quain.

Attest: By Alf L. Carroll.

The Yonkers Electric Light and Power Company,
by E. P. Prezzano, President.

Attest: By Alf L. Carroll.

Article VI

Provisions for Sickness, Disability, Superannuation,
Retirement, etc.

8. The Westchester Companies will continue in force for the duration of this agreement but without commitment or liability thereafter, substantially their present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the Savings and Loan Association, the allowances for jury duty and military duty, group insurance, the present medical services, sick benefits and any Mutual Aid Benefits now in force. The Westchester Companies will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Westchester Companies further state (but without modifying the voluntary and non-obligatory character of their Provisional Retirement Plans for Employees) their present intention to continue for the term of this contract, their said Provisional Retirement Plans for Employees as now maintained.

Article VII

Lay-Offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Westchester Companies have the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Westchester Companies shall continue to make reasonable provisions for the safety and health of their employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Westchester Companies in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend, or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Westchester Companies, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Westchester Companies and the Brotherhood or its members employed by the Westchester Companies, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Westchester Companies; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Westchester Companies and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Westchester Companies may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the mem-

bers of the board shall be final and binding upon the Westchester Companies, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Westchester Companies shall rein-

state such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Westchester Companies and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Westchester Companies have been able (and hope in the future to continue to be able) to secure to their employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Westchester Companies are regulated public utilities under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such public utilities, are unable to increase their rates and charges for services rendered consumers unless and until they secure the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other

party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of their desire to terminate the same.

In witness whereof, Westchester Lighting Company and The Yonkers Electric Light and Power Company and the Brotherhood and its Local Union have executed this agreement, the 28th day of May, 1937.

Westchester Lighting Company, by E. P. Prezzano, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B832, by Fred A. Ungerer, Temporary President; by Edward F. Hayde, Temp. Vice President; by Edmund J. Quain, Temp. Financial Secretary.

Attest: By Alf L. Carroll.

The Yonkers Electric Light and Power Company,
by E. P. Prezzano, President.

Attest: By Alf L. Carroll.

Memorandum of Agreement Between Consolidated Telegraph and Electrical Subway Company and the International Brotherhood of Electrical Workers, Through Its Local Union No. B828

Effective June 23, 1937

Agreement between Consolidated Telegraph and Electrical Subway Company (hereinafter referred to as the "Subway Company") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Subway Company who are members of the Brotherhood and enable the Subway Company efficiently and economically to perform its obligations to the City of New York and to public utilities using its conduits, the parties hereto agree with each other as follows:

Article I**Scope**

1. This agreement shall apply to all employees of the Subway Company who are members of the Brotherhood and are engaged in operations essential to the performance of its contractual obligations, but not including general foremen or supervisors, watchmen, or temporary employees.

Article II**No Discrimination**

2. The Subway Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Subway Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood and agrees that there shall be no discrimination, interference, restraint or coercion, by the Subway Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Subway Company time or property.

Article III**Hours and Working Conditions**

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours (except for chauffeurs) and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on thirty-five hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments. Chauffeurs will receive overtime for work in excess

of a nine-hour work day, or for work in excess of the scheduled hours per day (when less than nine hours) or of a forty-hour week.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Subway Company to be essential to its performance of its contractual and public obligations. Regular employees who work on a legal holiday according to their regular schedule will receive pay therefor on a straight-time basis and in addition will be given one day off, with pay on a straight-time basis, during an ensuing period of not more than one month. Where a regular employee is called to work on a legal holiday which is not on his regular schedule, he will receive regular pay plus overtime at the rate of time and a half for the work-time so required. The manner in which compensating time off is allowed for holiday work shall be continued in force as the same is now in effect in the Subway Company at the time of the signing of this agreement, in so far as such continuance is compatible with the efficient performance of the public obligations of the Subway Company.

Regular employees prevented by inclement weather from working during their standard working days will be paid for such time at their regular rates of pay, provided they report on the job at their usual starting time, for instructions.

Article IV

Vacations

5. Each employee who was in the employ of the Subway Company on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right

to allot vacation periods is reserved exclusively to the Subway Company, in order to insure orderly operation and adequate and continuous performance of its contractual obligations.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 24, 1937.

S. D. W. C. J. D. D. W. T. E. S. C.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the exception of those who have received increases between January 1, 1937 and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an

increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 24, 1937.

Consolidated Telegraph and Electrical Subway Company, by E. S. Callahan, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B828, Stephen Donohue, President; William Carey, Vice-President; Joseph Daly, Recording Secretary.

Attest: F. D. Sheibley, Secretary. (Seal.)

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Subway Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Subway Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Subway Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following

factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Subway Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Subway Company shall continue to make reasonable provision for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Subway Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Subway Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Subway Company and the Brotherhood or its members employed by the Subway Company, as to the meaning, ap-

plication or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman or the immediate supervisor of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the supervisor of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the management of the Company;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the management of the Subway Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Subway Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members.

In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Subway Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Subway Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the management of the Company, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time

of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for the Subway Company shall consist of not less than three employees, and not more than five such employees, designated by the Brotherhood, who upon reasonable notice to his immediate supervisor will be afforded such time off, without pay, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, upon notice to and permission from his immediate supervisor and the supervisor of the department or departments he is to visit.

The actual number of members of the grievance committee shall be mutually agreed upon between the Brotherhood and the management of the Subway Company.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Subway Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Subway Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours and working conditions, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Subway Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular departments of the enterprise, save such types of work as are in their nature seasonal or sporadic, and to the fact that the Subway Company is under contractual obligation to operate efficiently and economically and to maintain adequate and continuous service at rates and charges limited pursuant to contract. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement, or of any extension thereof, of its desire to terminate the same.

In Witness Whereof, the Subway Company and the Brotherhood and its Local Union have executed this agreement, the 24th day of June, 1937.

Consolidated Telegraph and Electrical Subway Company, by E. S. Callahan, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B828, Stephen Donohue, President; William Carey, Vice-President; Joseph Daly, Recording Secretary.

Attest: F. D. Sheibley, Secretary. (Seal.)

June 24, 1937.

The execution and delivery of this agreement was duly approved by the Members of Local No. B828 at a meeting held June 23, 1937.

Joseph Daly, Recording Secretary.

Memorandum of Agreement Between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, Through Its Local Union No. B829

Effective June 15th, 1937

Agreement between Consolidated Edison Company of New York, Inc. (hereinafter referred to as the "Edison Company") and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Edison Company who are members of the Brotherhood and enable the Edison Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted electric service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Edison Company who are members of the Brotherhood and are engaged in operations essential to the furnishing of electric service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Edison Company recognizes the Brotherhood as the collective bargaining agency for those employees who

are members of the Brotherhood. The Edison Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Edison Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Edison Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day, October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Edison Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Edison Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

J. J. D. W. J. E. E. F. G. D. W. T. R. H. T.
C. M. B. Jr.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Edison Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the ex-

ception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week; and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 15th, 1937.

Consolidated Edison Company of New York, Inc.,
by R. H. Tapscott, President. International
Brotherhood of Electrical Workers, by D. W.
Tracy, International President. Local Union No.
B829, Joseph J. Delvac, Wm. J. Eitelbach, E. F.
Galschjodt.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8: The Edison Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Edison Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless

the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Edison Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Edison Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Edison Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department from injury, shall be provided by the Edison Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire,

suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Edison Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Edison Company and the Brotherhood or its members employed by the Edison Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Edison Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties, through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Edison Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the

other two members, either the Brotherhood or the Edison Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Edison Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Edison Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Edison Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Edison Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Edison Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected as provided in Paragraph 13, subparagraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year

to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof; of its desire to terminate the same.

In witness whereof, Consolidated Edison Company of New York, Inc., and the Brotherhood and its Local Union have executed this agreement the 15th day of June, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B829, Joseph J. Delvac, Wm. J. Eitelbach, E. F. Galschjodt.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Memorandum of Agreement Between Consolidated Edison Company of New York, Inc., and the International Brotherhood of Electrical Workers, Through Its Local Union No. B830

Effective June 15th, 1937

Agreement between Consolidated Edison Company of New York, Inc. (hereinafter referred to as the "Consolidated Company"), and the International Brotherhood of Electrical Workers (hereinafter called the "Brotherhood"):

Witnesseth: That for the purpose of entering into such a basic agreement as to rates of pay, hours of work, and conditions of employment, and as to the methods of conducting collective bargaining between the parties as to questions which may from time to time arise, as will best promote and improve the economic welfare of employees of the Consolidated Company who are members of the Brotherhood and enable the Consolidated Company efficiently and economically to perform its obligations as a public utility and to furnish uninterrupted gas service in its territory, the parties hereto agree with each other as follows:

Article I

Scope

1. This agreement shall apply to all employees of the Consolidated Company who are members of the Brotherhood

and are engaged in operations essential to the furnishing of gas service to consumers, including meter readers, elevator operators, and other building employees, but not including general foremen or supervisors in charge of any classes of labor, watchmen, or temporary employees.

Article II

No Discrimination

2. The Consolidated Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of the Brotherhood. The Consolidated Company recognizes, and will not interfere with, the right of its employees to become members of the Brotherhood, and agrees that there shall be no discrimination, interference, restraint or coercion, by the Consolidated Company or any of its agents, against any employee because of his membership in the Brotherhood. The Brotherhood agrees, for itself and its members, not to intimidate or coerce employees into membership in the Brotherhood and also agrees not to solicit membership on Consolidated Company time or property.

Article III

Hours and Working Conditions

3. Effective as of the date of this agreement, there shall be maintained a working day of not more than eight (8) hours and a working week of not more than forty (40) hours. Time and a half shall be paid for all overtime in excess of eight (8) hours on any day and for all overtime in excess of forty (40) hours in any one week, provided that no employee shall be paid both daily and weekly overtime on account of the same hours of overtime work. In departments which are, at the time of this agreement, operating with a working day of less than eight (8) hours or a working week of less than forty (40) hours (to wit, on either thirty-five hours per week or thirty-seven and one-half hours per week), time and a half shall correspondingly be paid for time worked in excess of the standard work-day and work-week in such departments.

4. Work by employees on holidays (January 1st, February 12th, February 22nd, May 30th, July 4th, Labor Day,

October 12th, Election Day, November 11th, Thanksgiving Day, and December 25th) shall be limited to that which is deemed by the Consolidated Company to be essential to its performance of its obligations to furnish adequate and continuous service to consumers. An employee required to work on a holiday shall receive his regular holiday pay and, in addition, shall receive time-and-one-half for time actually worked and in no case less than four hours' overtime. An employee not required to work on a holiday which falls on any one of the days in his regular scheduled work week shall be allowed full pay for such holiday.

Article IV

Vacations

5. Each employee who was in the employ of the Consolidated Company or any other Company of the Consolidated Edison System on September 1, 1936, shall receive two weeks' vacation with pay, such vacation to be taken in a single period. Each employee who became such after September 1, 1936, but before January 1, 1937, shall receive one week's vacation with pay, to be taken in a single period. Vacation pay for an employee shall be at the rate of pay applicable to him for his standard work-week, at the time such vacation commences.

Rider Correcting Article IV, Section 5

Vacations

Article IV, Section 5, of the contract to which this Rider is annexed, is hereby corrected to provide that the two weeks' vacation with pay shall apply to employees who were in the employ of the Company on August 31, 1936, instead of September 1, 1936, and the one week vacation with pay to employees employed subsequent to August 31, 1936 and prior to January 1, 1937.

Executed, June 15th, 1937.

D. W. T. G. T. P. J. A. F. F. G. B. R. H. T.
C. M. B. Jr.

6. The vacation of an employee will, so far as practicable, be granted at the time requested by him; but the final right to allot vacation periods is reserved exclusively to the Consolidated Company, in order to insure orderly operation and adequate and continuous service to the public.

Article V

Wages and Classifications

7. The wages and classifications in effect at the date of signing this contract shall continue in effect during the life of the contract, and in addition thereto there shall be an increase of five per cent (5%) in the wages, to be made effective July 1, 1937, of all employees receiving less than Five thousand dollars (\$5,000.00) per annum, with the exception of those who have received increases between January 1, 1937, and July 1, 1937. Where increases have been made since January 1, 1937, which were less than five per cent (5%), they will be increased to equal five per cent (5%).

Rider to Article V, Section 7

Wages and Classifications

Article V, Section 7, of the contract to which this Rider is annexed, is hereby amended to provide that all employees receiving less than \$40.00 per week and entitled to a 5% increase under Article V, Section 7, shall receive, in lieu thereof, an increase of \$2.00 per week; and to provide further that employees who are not entitled to a 5% increase under Article V, Section 7, because they have received increases since January 1, 1937, shall receive an increase of \$1.00 per week, and to provide further that all increases provided under Article V, Section 7, and this Rider, shall be effective for the payroll week commencing July 4, 1937.

Executed, June 15th, 1937.

Consolidated Edison Company of New York, Inc., by R. H. Tapscott, President. International Brotherhood of Electrical Workers, by D. W. Tracy, International President. Local Union No. B830, George T. Parker, Joseph A. Fisher, Frederick G. Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

Article VI

Provisions for Sickness, Disability, Superannuation, Retirement, etc.

8. The Consolidated Company will continue in force, for the duration of this agreement but without commitment or liability thereafter, substantially its present system and

provisions for the welfare of employees, including the Green Mountain Lakes Farm, Inc., the present medical services, Company's sickness allowances, and all Mutual Aid benefits, the Savings and Loan Association, the allowances for jury duty and military duty, and group insurance. The Consolidated Company will continue to comply with the United States Social Security Act while this agreement is in effect, unless the Act is meanwhile adjudged to be invalid or inapplicable to such an employer. The Consolidated Company further states (but without modifying the voluntary and non-obligatory character of its Provisional Retirement Plan for Employees) its present intention to continue for the term of this contract its said Provisional Retirement Plan for Employees as now maintained.

Article VII

Lay-offs, Promotions and Demotions

9. It is understood and agreed that in all cases of promotion or demotion of employees from one classification to another, or of increase or decrease of forces, the following factors shall be considered, and that where factors (b), (c) and (d) are relatively equal, the length of continuous service shall govern:

- (a) Length of continuous service;
- (b) Knowledge, training, ability, skill and efficiency;
- (c) Physical fitness;
- (d) Family status, number of dependents, etc.

10. The Consolidated Company has the right to lay off or discharge any employee for sufficient and reasonable cause; but the employee or his representative shall, upon request, be advised of the reason or reasons for such lay-off or discharge.

Article VIII

Safety

11. The Consolidated Company shall continue to make reasonable provisions for the safety and health of its employees during the hours of their employment. Protective devices, wearing apparel, and other equipment, necessary for the proper protection of employees in any department

from injury, shall be provided by the Consolidated Company in accordance with the practice now prevailing in such department.

Article IX

Management

12. The supervision and control of all operations and the direction of all working forces, including the right to hire, suspend or discharge for proper cause, or to transfer employees, or to relieve employees from duty, because of lack of work or for other legitimate reasons, are vested exclusively in the Consolidated Company, provided that this will not be used for purposes of discrimination against any member of the Brotherhood.

Article X

Adjustment and Arbitration

13. Should any labor dispute or difference arise between the Consolidated Company and the Brotherhood or its members employed by the Consolidated Company, as to the meaning, application or operation of any provision of this agreement, such dispute or difference shall be settled forthwith in the following manner, and there shall be no quitting or suspension of work by any member of the Brotherhood during or on account of such dispute or difference:

First. Between the aggrieved employee, who is a member of the Brotherhood, and the foreman of the department involved;

Second. Between a member or members of the grievance committee designated by the Brotherhood, and the foreman and superintendent of the department;

Third. Between a member or members of the grievance committee designated by the Brotherhood, and the general superintendent or manager of the Company or Division involved;

Fourth. Between the representatives of the National organization of the Brotherhood and the representatives of the executives of the Consolidated Company; and

Fifth. In the event that such dispute or difference is not settled, promptly and to the satisfaction of the parties,

through one of the methods above-provided, the dispute or difference shall then be submitted immediately to a board of three members, of which board one member shall be designated by the Consolidated Company and one member by the Brotherhood, the third and impartial member to be designated by agreement between the other two members. In the event that these two members fail to agree upon the third member within ten days after the designation of the other two members, either the Brotherhood or the Consolidated Company may ask The Governor of the State of New York to designate such third member of the board; and the member so designated by The Governor shall complete the board. The decision of a majority of the members of the board shall be final and binding upon the Consolidated Company, and upon the Brotherhood and its members, for the duration of this agreement.

14. Specified periods shall be agreed upon between the grievance committee and the general superintendent or manager of the Company or the Division thereof involved, for the presentation of grievances hereunder; provided, however, that matters pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting may be presented at any time in accordance with the foregoing provision.

15. The grievance committee for each department shall consist of not less than three employees of that department, and not more than five such employees, designated by the Brotherhood, who will be afforded such time off, without pay, upon reasonable notice to their department head, as may be required:

First, to attend regularly scheduled meetings of such grievance committee;

Second, to attend meetings pertaining to discharges or other matters which cannot reasonably be delayed until the time of the next regular meeting;

Third, to visit departments other than his own, at any reasonable times, for the purpose of transacting the legitimate business of the grievance committee, after notice to and permission from his department superintendent or his designated representative, and upon notice to the department head of each department to be so visited.

Article XI

Right of Review of Discharge

16. In the event an employee is discharged from his employment from and after the date hereof and he believes that he has been unjustly dealt with, such discharge shall constitute a dispute or difference for determination under the method of adjusting grievances hereinbefore provided.

17. In the event that it is decided, in the manner provided in this agreement, that such discharge was wrongful and without just cause, the Consolidated Company shall reinstate such employee and pay to him full compensation at his regular rate for the time lost. All such cases of discharge shall be taken up and disposed of within five (5) days from the date of discharge, unless reference to a board of arbitrators is invoked.

Article XII

Future Negotiations and Outlawing of Strikes and Lockouts

18. Joint conferences between representatives of the Consolidated Company and of the Brotherhood shall commence, in the City of New York, on May 1, 1938, for the purpose of negotiating an agreement with regard to wages, hours, working conditions, and any other provisions of this agreement, to take effect upon the expiration of this agreement. The representatives of the parties hereto shall give due weight in such negotiations to the relatively high degree of continuity of employment which the Consolidated Company has been able (and hopes in the future to continue to be able) to secure to its employees in the regular operating departments of the enterprise, save such construction or other types of work as are in their nature seasonal or sporadic, and to the fact that the Consolidated Company is a regulated public utility under the public obligation to operate efficiently and economically and to maintain adequate and continuous service, and, as such a public utility, is unable to increase its rates and charges for services rendered consumers unless and until it secures the favorable action of the Public Service Commission of the State of New York according to law. In the event the conferees should be unable to agree, the issues in dispute shall be disposed of by decision of a board of arbitrators, selected

as provided in Paragraph 13, sub-paragraph Fifth above, and there shall be no cessation or stoppage of work, service or employment, on the part of or at the instance of either party, because of or during such disagreement.

Article XIII

Duration of Agreement

19. This agreement shall remain in full force from the date of the signing hereof until June 30, 1938, and from year to year thereafter until either party notifies the other party, not less than thirty (30) days prior to the expiration of this agreement or of any extension thereof, of its desire to terminate the same.

In witness whereof, Consolidated Edison Company of New York, Inc., and the Brotherhood and its Local Union have executed this agreement the 15th day of June, 1937.

Consolidated Edison Company of New York, Inc.,
by R. H. Tapscott, President. International
Brotherhood of Electrical Workers, by D. W.
Tracy, International President. Local Union No.
B830, George T. Parker, Joseph A. Fisher, Fred-
erick G. Buchner.

Attest: C. M. Breidenbach, Jr., Assistant Secretary.

PETITIONERS' EXHIBIT No. 2

A. They did not.

Q. You stated that you signed some articles in a paper called the "Live Wire", in October or November issues, but you did not state the year, as I recall it. Can you state the year?

A. Yes.

Q. What is it?

A. 1935.

Q. I understood at the beginning of your testimony that you said that you were discharged on November 25.

A. November 29.

Q. The 29th?

A. Yes.

Q. That's all.

(Witness excused.)

Mr. Moscovitz: I will call Mr. Grulich.

Mr. Moscovitz: Mr. Examiner, Judge Ransom and myself are interested in finding out whether or not you would care for some further discussion regarding the amendment at this point before we proceed with this witness.

Trial Examiner Gates: I would like to have you state, Mr. Moscovitz, whether or not Board's exhibit #1 discloses that the I. B. E. W. was served with a copy of the complaint and the amended notice of hearing. My impression is that it does.

Mr. Moscovitz: Mr. Examiner, you will notice in Board Exhibit No. 1 a certification of Mrs. Herrick is that the complaint in this proceeding was served upon the Consolidated Edison Company as well as the other companies as the exhibit will show, the United Electrical & Radio Workers and the International Brotherhood of Electrical Workers. If you refer to the photostatic copy which you find in the exhibit you will see that the Consolidated Edison Company of New York acknowledge receipt of the complaint at 4 Irving Place, and you will also find that the United Electrical & Radio Workers of America acknowledged receipt on May 12, 1937, signed by G. Levine, and then you will find above that on the same date the acknowledgment of service by the I. B. E. W. signed by D. Kaplan.

Now, before the I. B. E. W., there is the figure "3", and before the figure 3 there is some lettering which I cannot figure out. It might be "local", it might be something else. I am not sure, but in any event there is an indication of acknowledgment by the I. B. E. W. signed by Mr. Kaplan, and then further on in the exhibit you will find that the amended notice of hearing which gave the adjourned date for the proceeding was served upon the International Brotherhood of Electrical Workers, as well as the other persons and parties in the complaint.

Judge Ransom: I don't know what the address is of the International Brotherhood of Electrical Workers or any of the authorized agents of that organization other than such addresses as have been given in this proceeding with respect to certain of the local unions which have been recognized by the respondent companies as collective bargaining agencies for such of their employees as belong to those unions.

I notice, however, that this purported service on the International Brotherhood of Electrical Workers is at 103 East 25th Street, which is not an address which I personally am

able to recognize as having any relationship to this organization.

So far as any of the local unions are involved in this proceeding are concerned. As far as I know, that may or may not be, that address of some local of the I. B. E. W., it may be, but not of any local which has been covered by testimony here. However, I do not personally regard the question of service of the notice of hearing as of any moment. My point is that you cannot maintain a valid proceeding against an employer and a collective bargaining agency in behalf of various of its employees under Section 8, subdivision 2 of the Act and hear and determine a section 8-2 charge and complaint without citing the labor organization complained of as a party to the proceeding.

I believe that the labor organization has been cited in here as a party to 9-2 proceedings in other cases, that is, I believe it has been cited in other cases and I think it is necessary hereto a valid proceeding. I do not think that this purported service on the I. B. E. W. at 130, or something, in the East 25th Street, even if it were a valid service, which I do not know, and therefore do not concede—

Trial Examiner Gates: Do you recall the names of any of these cases before the Board?

Judge Ransom: I do not at the moment, I probably could get them for you if necessary. Mr. Moscovitz probably knows them, but I do not think that this service, even if it were a good service of notice, would make this a valid proceeding on a Section 8 subdivision 2 charge and complaint, without the naming of the labor organization attacked and complained of as a party defendant.

Mr. Moscovitz: Well, all I say in this case is, so that there will be no confusion, first, that there has been, as evidently appears in the face of Board Exhibit No. 1, service. In the second place, there is no question here of placing the responsibility for the proceeding on the shoulders of the I. B. E. W. That should be made very clear, because the Board takes the position that the International Brotherhood of Electrical Workers is a bona fide labor organization within the meaning of our statute, and we are not here in this proceeding attacking the legality of the I. B. E. W. All we do here—

Trial Examiner Gates: Do you know of any cases, Mr. Moscovitz, in which the Board has held that? Under which

it may be decided under Section 8-2, that that is a necessary or a proper party?

Mr. Moscovitz: That a union is a necessary or proper party?

Trial Examiner Gates: Yes.

Mr. Moscovitz: I do not know of any such cases.

Trial Examiner Gates: Yes.

Mr. Moscovitz: I know of no such cases, all I want to point out in this proceeding, Mr. Examiner, is this, that we ask for no more than an order which directs the Consolidated Edison System to stop doing the things which the complaint alleges, that the Consolidated Edison System is doing in violation of 8-2, so that there should not be any question about the I. B. E. W., if we get an order directing the system to stop contributing to the I. B. E. W., or to stop controlling the I. B. E. W.

Trial Examiner Gates: I don't think it is necessary to go into it any further. The motion to amend the complaint, to amend paragraph 23 of the complaint by changing the figure 16 to 21, in the second line to 17 and 22, is granted; a similar motion as to paragraph 24, to change the figures 16 and 21 to 17 and 22, is granted.

Judge Ransom: I respectfully except, and in behalf of the respondents reserving our objections to jurisdiction, we ask that this proceeding be now terminated because of a fatal defect of the parties.

Trial Examiner Gates: The motion is denied.

Judge Ransom: Exception.

(Discussion off the record.)

Trial Examiner Gates: Proceed.

PETITIONERS' EXHIBIT No. 3

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case C-245

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., and Its
 Affiliated Companies Brooklyn Edison Company, Inc.,
 New York and Queens Electric Light and Power Com-
 pany, Westchester Lighting Company, The Yonkers
 Electric Light and Power Company, New York Steam
 Corporation, Consolidated Telegraph and Electrical Sub-
 way Company,

and

UNITED ELECTRICAL AND RADIO WORKERS OF AMERICA, Affil-
 iated with the Committee for Industrial Organization

Mr. David A. Moscovitz and Mr. Will Maslow, for the
 Board.

Whitman, Ransom, Coulson & Goetz, by Mr. William L.
 Ransom and Mr. Pincus M.² Berkson, of New York City,
 for the Respondents.

Mr. Louis B. Boudin and Mr. Sidney Elliott Cohn, of New
 York City, for the United.

Mr. Joseph Friedman, of Counsel to the Board.

Decision and Order

Statement of the Case

Upon charges duly filed by United Electrical and Radio
 Workers of America, herein called the United, the National
 Labor Relations Board, herein called the Board, by Elinore
 Morehouse Herrick, Regional Director for the Second
 Region (New York City), issued its complaint dated May
 12, 1937, against Consolidated Edison Company of New
 York, Inc., and its affiliated Companies: Brooklyn Edison
 Company, Inc., New York and Queens Electric Light and
 Power Company, Westchester Lighting Company, The
 Yonkers Electric Light and Power Company, New York
 Steam Corporation, and Consolidated Telegraph and Elec-
 trical Subway Company, herein called the respondents,
 alleging that the respondents had engaged in and were

engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect of the unfair labor practices, the complaint in substance alleged (1) that the respondents had employed and were employing industrial spies for the purpose of disclosing to the respondents the activities of their employees in and on behalf of labor organizations; (2) that on or about November 29, 1935, the respondents discharged, and thereafter refused to reinstate, Martin A. Wersing, Julius A. Grenlich, and Michael Wagner, employees of the respondents, and on or about June 19, 1936, discharged, and thereafter refused to reinstate, William J. Kennedy and John Emmler, employees of the respondents, for the reason that they had engaged in concerted activities with other employees of the respondents for their mutual aid and protection; and (3) that the respondents had interfered with, restrained, and coerced their employees in the exercise of their right to form, join, and assist labor organizations of their own choosing and were continuing to do so, had contributed and were contributing financial and other support to the International Brotherhood of Electrical Workers, herein called the I. B. E. W., and had coerced and were coercing their employees to join or assist the I. B. E. W.

Copies of the complaint and of notice of a hearing to be held on June 1, 1937, at New York City, both dated May 12, 1937, were duly served upon the respondents, upon the United, and upon the I. B. E. W. On May 25, 1937, the Regional Director issued and duly served upon the parties and the I. B. E. W. an amended notice of hearing, specifying that the hearing would be held on June 3, 1937, instead of on June 1, 1937.

On May 17, 1937, the respondents, appearing specially, filed a motion to dismiss the complaint for lack of jurisdiction, on the ground that the Act was inapplicable to the respondents and their labor relations with their employees, for the reason, it was asserted, that the respondents conduct a local, intrastate business and are, therefore, subject exclusively to the New York State Labor Relations Act,¹

¹ Chapter 443 of the Laws of 1937. The State Act is also designated as Article 20 of the Labor Law.

which was to become effective on July 1, 1937. The motion included a request that the motion be heard and determined by the Board prior to the hearing on the complaint, and was accompanied by an affidavit of Oscar H. Fogg, vice-chairman of the board of trustees of the respondent Consolidated Edison Company of New York, Inc., and vice-chairman or member of the board of directors of each of the affiliated companies named as respondents, containing a statement of facts tending to show that the respondents' business was of an intrastate character. On June 2, 1937, the Board denied the respondents' request for a prior and separate hearing by the Board on the motion to dismiss the complaint.

Pursuant to the amended notice, a hearing was held at New York City on June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, before Robert M. Gates, duly designated as Trial Examiner by the Board. The Board, the respondents, and the United were represented by counsel and participated in the hearing. The I. B. E. W. did not appear at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing on the issues was afforded all the parties.

At the commencement of the hearing, argument was heard on two separate petitions to intervene filed with the Regional Director prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, both labor organizations claiming to have filed with the Regional Director informal charges against the respondents. The complaint herein was not based on these informal charges, but only on the formal charge filed by the United. Upon separate objections by counsel for the Board, the respondents and the United, the Trial Examiner reserved decision thereon, but on June 10, 1937, the second day of the hearing, he denied both petitions to intervene. The ruling is hereby affirmed.

At the commencement of the hearing, the respondents reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on the respondents' motion to dismiss the complaint. At the close of the presentation of the Board's case, the motion to dismiss the complaint for lack of jurisdiction was renewed by the respondents

and was denied by the Trial Examiner. The ruling is hereby affirmed.

On June 10, 1937, the second day of the hearing, the Trial Examiner allowed the complaint to be amended to include allegations of the discriminatory discharge of Stephen L. Solosy, without objection by the respondents other than their general reservation of objections to the jurisdiction of the Board. On June 14, 1937, the respondents filed a verified answer, in which they reserved their objections to the jurisdiction of the Board and in substance denied engaging in the unfair labor practices alleged in the complaint, setting forth in addition affirmative allegations in defense thereof.

Upon the completion of the presentation of the Board's case on June 24, 1937, counsel for the respondents requested an adjournment until July 6, 1937, to enable him adequately to prepare and present the respondents' case, and in particular to secure the testimony of Floyd L. Carlisle and Harold Dean, the testimony of both of whom was asserted to be indispensable. It was shown that Carlisle, who was chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and had been in charge of the respondents' labor policies and negotiations, was in France attending a meeting of the World Power Conference and would return to New York City on July 5, 1937; and that Dean, who was vice-president of New York and Queens Electric Light and Power Company and in charge of the execution of the policies of that company which resulted in the alleged discriminatory discharges of five of the persons named in the complaint, was in Milwaukee attending the annual conference of the American Institute of Electrical Engineers and was thus unavailable as a witness at that time. The only reason offered for not calling other witnesses at the close of the Board's case was that the Board had completed the presentation of its case sooner than was anticipated by the respondents. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only, and reserved until that time decision on the question whether the testimony of Dean and other witnesses would be taken when the hearing was resumed on July 6, 1937. The Trial Examiner granted permission to the respondents to present the matter of taking the testimony of witnesses other than

Carlisle on July 6, 1937, directly to the Board in the meantime. This was done by the respondents in a letter to the Board, dated June 28, 1937. The Board replied in a letter, dated July 2, 1937, stating that it would permit both Carlisle and Dean to testify on July 6, 1937, but would not permit any other witnesses to testify, on the ground that such other witnesses should have been produced on the completion of the presentation of the Board's case on June 24, 1937. After the testimony of Carlisle and Dean had been received on July 6, 1937, counsel for the respondents called a witness to testify concerning the alleged discriminatory discharge of Stephen L. Solosy. The Trial Examiner refused to allow the witness to testify. The respondents duly excepted to the ruling of the Trial Examiner. The Trial Examiner, however, allowed the respondents to introduce into the record an offer of proof concerning the alleged discriminatory discharge of Stephen L. Solosy.

After the close of the Board's case, counsel for the Board moved to conform the complaint to the evidence. The Trial Examiner denied the motion in so far as it was directed to bringing within the allegations of the complaint the discriminatory discharge of Philemon Ewing, who was not named in the complaint, but concerning whose discharge testimony had been received; but in other respects the motion was granted. The ruling is hereby affirmed. At the same time the Trial Examiner granted the respondent's motion to amend its answer to include as a separate defense allegations that certain contracts executed by the respondents and certain locals of the I. B. E. W. as of June 15, 1937, after the commencement of the hearing, had rendered moot any controversy raised by the complaint.

The parties did not avail themselves of the opportunity afforded for argument at the close of the hearing, but thereafter the respondents filed a brief.

By order of the Board, dated September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 27, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

During the course of the hearing the Trial Examiner made a number of rulings on motions and on objections to the admission of evidence. The Board has reviewed the

rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

1. The Respondents and their Businesses

A. Incorporation and nature of business

Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are New York public utility corporations, having their principal offices and places of business in New York City. They are engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. Consolidated Edison Company of New York, Inc. is engaged also in the business (a) of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and (b) in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to its manufacture of gas, namely, coke, coke breeze, tar, light oils, and sulphate ammonia. Consolidated Edison Company of New York, Inc., besides being an operating utility company is also a holding company, owning controlling stock interests, as described below, in the other respondents herein. Westchester Lighting Company and The Yonkers Electric Light and Power Company are New York public utility corporations, having their principal office and place of business in Mount Vernon, New York. The former company is engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the city of Yonkers; and the latter company is engaged in the business of supplying electricity to consumers situated in the City of Yonkers, Westchester County, New York. New York Steam Corporation, a New York public utility corporation having its principal office and place of business in New York City, is engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan. Consolidated Telegraph and

Electrical Subway Company, a New York corporation having its principal office and place of business in New York City, is engaged in the business of constructing, equipping, maintaining, and operating, under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors (other than telegraphic and telephone conductors) in the Boroughs of Manhattan and The Bronx. Consolidated Edison Company of New York, Inc., and Westchester Lighting Company occupy space in such ducts and pay rent for the space so occupied.

B. Stock Ownership

Consolidated Edison Company of New York, Inc., conducts the electric business formerly conducted by The New York Edison Company, Inc. (including that of the latter's predecessors, The New York Edison Company and The United Electric Light and Power Company) and by Bronx Gas and Electric Company, merged into Consolidated Edison Company of New York, Inc., in 1936; also the gas business formerly conducted by it under the name of Consolidated Gas Company of New York and that conducted by various gas companies in the Boroughs of Manhattan and The Bronx and part of the Borough of Queens, merged in 1936 into Consolidated Edison Company of New York, Inc. The latter company owns more than 90 per cent of all the outstanding voting stock of each of its affiliated companies named as respondents herein.

C. Unitary and Integrated System

The respondents are commonly referred to as the Consolidated Edison Company group of companies or the Consolidated Edison Company System. They constitute and are operated as a unitary and integrated system.

System management.—A majority of the board of directors of each of the respondents, other than Consolidated Edison Company of New York, Inc., is made up of trustees or officers of the latter company. Each of the respondents has executive and operating officers and employees who are not officers of Consolidated Edison Company of New York, Inc., but who take part, with the trustees and officers of the latter company, in the discussion and determination of the major and general policies of the respondents. The

major labor policies, among others, of the respondents are thus discussed and determined, but are locally administered and applied by the board of directors and executive officers of each respondent, in a manner not inconsistent with the general policies as determined by and for the respondents as a whole.

Unified operations of System.—The companies of the Consolidated Edison Company System have for many years been under a unified ownership, management, and operation. Thus, the gas operations of the System have for many years been carried on in accordance with the terms of joint facility arrangements; and the manufacturing plants, holder-stations, pumping stations, transfer and distribution lines, and other properties of the various companies have been and are operated as an interconnected system. Similarly, the generating facilities of the electric companies in the System have been and are operated as a unit for the System electric load, through the medium of a System operator or load dispatcher, to secure the greatest over-all economy of production consistent with the highest degree of continuity. Additional electric energy is purchased from New York Light and Power Company, which is not affiliated with the respondents, under interchange of power arrangements established with that company, in the interests of assuring continuity of service to the public and as a means of providing for the electric requirements of the System. New York Steam Corporation has a connection with one of the electric generating stations of Consolidated Edison Company of New York, Inc., from which is made available an additional supply of steam for resale to its customers.

Location of respondents' properties.—The respondents' electric generating stations, sub-stations, gas manufacturing plants, gas holder-stations, steam generating plants, service buildings, shops, store-rooms, garages, and similar structures are all maintained and operated within the State of New York, and principally in New York City and Westchester County. All transmission and distribution facilities and equipment owned by the respondents and all other property owned by the respondents and used in their business are located in New York City or Westchester County. All meters in use by any of the respondents are located and are read on the premises of consumers situated in New York

City and Westchester County; and all metering apparatus and equipment furnished by the respondents are similarly located.

Exclusiveness of respondents' service.—In 1936 the System supplied 97.5 per cent of the total electric energy sold by central station companies in New York City, and practically all of the electric energy sold by central station companies in Westchester County. It supplied 55.3 per cent of the total gas supplied to consumers in New York City. It did not supply any gas to consumers in the Boroughs of Brooklyn and Richmond, and the larger part of the Borough of Queens. On the other hand, its percentage of the total gas supplied to consumers in Manhattan and The Bronx is very much greater than 55.3 per cent. Westchester Lighting Company is the only public utility supplying gas in Westchester County; and New York Steam Corporation is the only central-station steam utility in New York City.

Annual production, sales, and employment totals.—In 1936, the System generated and purchased 6,038,989,792 kilowatt hours of electric energy and sold 5,130,976,460 kilowatt hours. The total revenue from the sale of electric energy amounted to \$180,448,596.19. During the same period the System produced 39,286,022,000 cubic feet of gas, and sold 38,016,134,000 cubic feet. The total revenue from the sale of gas amounted to \$41,163,261.69. The total revenue from the sale of steam during 1936 was \$10,761,341.04. During the same period the revenue from the sale of coal and oil by-products amounted to \$3,485,338.01, but such revenue is treated by the respondents as an abatement of production expenses.

As of April 17, 1937, the respondents employed 42,101 employees. The total annual payroll for 1936, including annuities and separation allowances paid, amounted to \$81,891,990.40.

D. Purchase of Materials in Interstate Commerce

Coal and oil.—The raw materials used by the respondents in the production of all their electric energy, gas, and steam are coal and gas-oil. In 1936 the respondents purchased 4,975,452 tons of coal at a cost of \$23,224,761, and purchased 114,370,343 gallons of oil. All the coal was mined outside

the State of New York and transported from points outside the State of New York to the plants of the respondents by rail and barge or by rail and steamship. All the oil is produced at wells and refineries outside the State of New York and transported in barges from points outside the State of New York to the respondents' gas plants in New York City. The respondents do not own or operate any ships, barges, tugs, or freight-cars for the transportation of gas and oil from their points of origin outside the State of New York to the respondents' stations or storage yards. The respondents maintain unloading and coal conveying equipment at their stations or storage-yards and the respondents' employees unload the coal from the boats. The shipment of coal and oil to the respondents is practically continuous throughout the year.

Copper.—In 1936 the respondents purchased \$53,160 worth of copper for electrical construction and operation. The copper is mined outside the State of New York and a substantial portion thereof is purchased from concerns situated outside the State of New York.

Cable.—In 1936 the respondents purchased \$4,659,840 worth of cable, of which approximately 30 per cent came from factories situated outside the State of New York.

Other materials and equipment.—In 1936 the respondents purchased substantial quantities of other materials, equipment, and supplies, including distribution and power transformers, switches, steel pipe, concrete, cement, electric meters, gas meters, poles, incandescent lamps, and similar items. Part of these items were purchased from concerns situated outside the State of New York, and part from dealers within the State of New York.

E. Dependence of Particular Consumers on Electric Energy and Gas Supplied by the Respondents

The written stipulation for the determination of the question of jurisdiction entered into by counsel for the Board and counsel for the respondents sets forth data concerning a number of particular consumers which show the dependence on the electric energy and gas supplied by the respondents of various types of important businesses engaged in interstate and foreign commerce and communication and the disastrous effect on such commerce and com-

munication that would result from a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees.

Railroads.—The respondents supply electric energy to the New York Central Railroad, an interstate railroad. The electricity is used by the Railroad Company in part for the lighting and operation of the Grand Central Terminal, a terminal for interstate and intrastate trains operated by the Railroad Company, in part for the lighting and operation of various structures on terminal lands, and in part for the electric operation of both intrastate and interstate passenger trains from Harmon, New York, to the Grand Central Terminal and from the Grand Central Terminal to Harmon, New York. No steam-propelled passenger trains ordinarily operate between the Grand Central Terminal and Harmon, New York. Electricity supplied by the respondents is also used for the air-conditioning of Pullman cars attached to interstate trains in the yards of the Railroad Company in New York City. In 1936 the Railroad Company purchased from the respondents 145,593,421 kilowatt hours for all purposes. The respondents deliver all of the electric energy to the Railroad Company at designated locations in the State of New York.

The respondents also supply electric energy to the New York, New Haven, and Hartford Railroad Company, an interstate railroad, which utilizes it for the operations of its freight terminals, for both interstate and intrastate trains, and for the operation of passenger trains in and out of Grand Central Terminal, many of which trains operate on interstate runs. The total electric energy supplied to the New Haven Railroad in 1936 was 58,793,983 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Hudson and Manhattan Railroad Company, which utilizes it for the lighting and operation of its terminal buildings, for the operation of a rapid transit railroad which runs for a distance in New York City and thence by tunnel to Jersey City and Hoboken, New Jersey, and for the operation of an interurban railroad from its terminal in New York City through the tunnel under the North River to Jersey City and Newark, New Jersey. The total electrical energy supplied

to this Railroad Company in 1936 was 57,221,097 kilowatt hours and was delivered at designated locations in the State of New York.

The respondents also supply electric energy to the Lehigh Valley Railroad Terminal in New York City for the operation of its interstate railroad terminal.

Steam service supplied by New York Steam Corporation, a respondent herein, is used to operate compressors, for the operation of switches in the interstate railroad tunnel of the Pennsylvania Railroad Company under the North River.

Navigation in New York harbor.—The respondents supply electric energy to the Federal Government for the operation in New York harbor of six lighthouses, 8 beacon or harbor lights, the United States Barge office, the United States Customs Houses, various warehouses, and Governor's Island. They also supply electricity to the City of New York for the operation of devices used as aids to navigation, namely, lights on various bridges and on the ends of various piers and docks. The respondents also supply electric energy to a majority of the piers of trans-Atlantic and coastal steamship companies, along the East River and the North River, for lighting, freight-handling, and related uses. They also supply electricity to the Port of New York Authority for the operation of its terminal; the Holland Tunnel, an interstate vehicular tunnel under the Hudson River; and the other projects under its supervision.

Ferries.—The respondents supply electricity to various ferry slips from which steam-propelled ferries operate on the Hudson River between New York and New Jersey. The electricity is used in the operation of waiting rooms, ticket offices, signs, and approaches. They also supply electricity, under contract with the Federal Government, to ferry slips from which ferries operate in waters other than the Hudson River.

United States post-offices.—The respondents supply electric energy to the Federal Government for the operation of its General Post Office in New York City and some 132 branch post-offices in New York City and Westchester County. The electricity is used for operating pneumatic tubes between postal stations, equipment in stations, including conveyor belts, elevators, ventilators, and similar equipment. Postal operations are conducted on a 24-hour basis.

Telegraph.—The respondents supply electric energy to the Western Union Telegraph Company and its some 210 branch offices in New York City and Westchester County, and to the Postal Telegraph Company and its some 140 branch offices in New York City and Westchester County. The electricity is used for general lighting and power purposes and for the operation of apparatus used in the transmitting and receiving of telegraphic messages, both local and interstate.

Telephone.—The respondents supply electric energy to the New York Telephone Company for the operation of its various buildings, offices, and exchanges in New York City and Westchester County. The electricity is used to operate the equipment utilized in the transmitting and receiving of interstate and local communications.

Radio.—The respondents supply electric energy to RCA Communications, Inc., a subsidiary of Radio Corporation of America, which, among other uses, is used to operate the switchboards for its trans-Atlantic radio service. Similarly, the respondents supply electric energy to Columbia Broadcasting System, Inc., and to its subsidiary, Atlantic Broadcasting Company, for the purpose, among others, of operating equipment which broadcasts to other states as well as the State of New York.

Airports.—The respondents supply electric energy to the Floyd Bennett Air Field, for such purposes as building lighting, field illumination, the operation of a radio beam, obstruction lighting, and the operation of hangar machine shops.

Newspapers.—The respondents supply electric energy to the New York Times Company for the operation of all the power equipment in the printing plant and for general lighting purposes. The newspapers printed and published by this company are circulated throughout the world.

Dow-Jones Tickers.—The respondents supply electric energy to Dow-Jones and Company, Inc., for the operation of its financial news ticker service.

New York Stock Exchange.—The respondents supply electric energy to the New York Stock Exchange Building Company, and a related concern, Stock Exchange Building Company, located in the same premises, for light and power

in the operation of the Stock Exchange and of the Stock Exchange ticker system for the sending out of stock quotations and transactions. Through this system stock exchange quotations are made instantly available throughout the country by telegraph.

F. Relation to Commerce

On January 15, 1936, an interruption of the alternating current service in parts of the Boroughs of Manhattan and The Bronx was produced by a short circuit in the respondents' Hell Gate generating station. Service to some 40,000 customers, out of about 2,000,000 electric customers of the respondents, involving about ten per cent of the load, was affected. Although other generating plants of the System took over the load from such units at the Hell Gate station as were affected by the short-circuit, several telephone exchanges and branch post-offices, and various industrial and commercial concerns in the area affected, experienced a partial or total interruption of electric service, as the restoration of service required considerable work in the streets, on transformers, and on consumers' premises (fuses, motors, etc.) to repair the effects of the impact of the short circuit on the distribution lines in the area affected, as well as work in the electrical galleries at Hell Gate.

This incident coupled with the fact that the respondents supply 97.5 per cent of the total electric energy sold in New York City by central station companies and the respondents' contention at the hearing and in their brief that the operations of the System could easily be endangered and seriously dislocated by a single one of certain of its employees, is indicative of the effect which a labor dispute between the respondents and their employees might have upon the operations of the respondents and in the multitude of businesses whose operations are dependent on them for electric energy.

It thus becomes evident from all the above findings (1) that the respondents receive vast quantities of coal and oil and quantities of copper, cable, and other commodities in interstate commerce; (2) that the highly industrial and commercial area of New York City and Westchester county, the former the largest shipping, transportation, and commercial center in the United States, is almost entirely dependent on the Company as a commercial source of electric energy and steam, while the Boroughs of Manhattan and The Bronx,

a part of the Borough of Queens, and Westchester County are almost entirely dependent on the respondents for gas; (3) that a labor dispute between the respondents and their employees interrupting the respondents' operations would seriously affect the flow of vast quantities of coal and gas-oil, and quantities of copper, cable and other commodities, in interstate commerce; (4) that a cessation of the flow of power from the respondents, such as would tend to accompany a labor dispute between the respondents and their employees, (a) would in a short time paralyze the operations of many of the instrumentalities of interstate and foreign commerce and communication in and around New York City, and thereby also paralyze the operations of most of the businesses situated in the area served by the respondents and engaged in shipping and receiving commodities in interstate and foreign commerce, and would curtail the United States mail service, including mail carried in interstate and foreign commerce, and (b) would directly cause the cessation or curtailment of the operations of the businesses served with power by the respondents and engaged in shipping and receiving commodities in interstate or foreign commerce.

Expressed concisely, a labor dispute between the respondents and their employees interrupting the respondents' operations would not only affect the flow of the large quantities of coal and oil which they receive in interstate commerce, but might be substantially equivalent to the effect on interstate and foreign commerce and communication which would be caused by simultaneous labor disputes in the respondents' business and in all the businesses served by the respondents that are engaged in operating the instrumentalities of interstate and foreign commerce and communication and all the businesses engaged in shipping and receiving commodities in interstate or foreign commerce.

II. The United Electrical and Radio Workers of America

The United Electrical and Radio Workers of America, which has filed the charge upon which the complaint herein is founded, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership the employees of the whole electrical and radio industry in the United States. Local No. 1212 of the United admits to membership only employees of the respondents.

III. The Unfair Labor Practices

A. Background of Labor Organization Among the Respondents' Employees

In the latter part of 1933 and the early part of 1934 organizations known as Employees' Representation plans, herein called the Plans, were established with the assistance of the respondents among the employees of each of the respondents and of each of the companies which were merged in 1936 into Consolidated Edison Company of New York, Inc. The Plans appear to have been formed as a means of purported compliance with the National Industrial Recovery Act and the codes adopted thereunder for the power industry.

There is specific oral and documentary evidence concerning the formation and operation of the Plan among the employees of Bronx Gas and Electric Company, which was merged in 1936 into Consolidated Edison Company of New York, Inc., and also ample evidence that the formation and operation of the Plans among the employees of the various other companies in the respondents' system conformed to a similar pattern. The following narrative of the establishment of the Plan among the employees of Bronx Gas and Electric Company is thus typical of the Plans established at approximately the same time throughout the companies of the respondents' system, including Consolidated Telegraph and Electrical Subway Company.

One day in the latter part of 1933, during working hours, several employees of Bronx Gas and Electric Company were notified by their supervisors to report to the president and the vice-president of the Company. On their arrival they were informed by the president and the vice-president that they, the employees, had been sent on this mission by their fellow employees for the purpose of instituting a procedure for collective bargaining. They were given petitions to circulate among the employees for signatures. The petitions bore captions stating in substance that the subscribers desired to have a poll among the employees to determine upon the establishment of a means of collective bargaining. Harold Straub, one of the employees engaged in procuring signatures, testified that his foreman placed a company car at his disposal for contacting employees and that he devoted

two full days to the task, for which he was paid his regular salary as a lineman. After sufficient signatures to the petitions had been obtained, a poll was conducted among the employees on the question whether they desired the establishment of the Plan, which had been drafted and distributed by the Company, as a means of collective bargaining. The question having been decided affirmatively, the election of officers was held shortly thereafter. Practically all the employees became members of the Plan, as it was the current sentiment that such action accorded with the desire of the Company. The Company bore the expense of conducting the poll and the election and paid for the printing of the petitions, circulars, and copies of the constitution and by-laws of the Plan and for the time devoted to the Plan by sundry employees.

The constitution and by-laws of the Plan stated that its purpose was "to provide means by which employees of the Company, through representatives of their own choosing, may deal collectively with the management of the Company" and that "collective bargaining under this Plan may relate to wages, hours of labor, working conditions, health, safety, education, recreation, and like matters affecting employment, together with the adjustment of grievances arising out of the relations of Employees with the Management." Membership was restricted to employees, and was to cease with termination of employment. There were no dues. The Plan divided the Company into a number of departments and provided for a department council and a general council. The former consisted of representatives elected by the employees in each department, in the proportion of one representative for every 50 members of the Plan in the department. The general council consisted of the chairmen of the department councils. In the larger companies of the respondents' system, there were also bureau councils, bureaus being subdivisions of departments. In voting each member of the general council was entitled to cast one vote for each member of the Plan represented by him.

Similar Plans were established in all the Companies of the respondents' system and in a substantially similar fashion. The respondents bore the expenses of all the meetings and elections, both of which took place on Company time and property, of clerical and stenographic services,

printing, and of the entire functioning of the Plans. The members of the general and department councils were paid their regular salaries by the respondents for all time devoted to Plan affairs. The chairmen of the general councils devoted most of their time to Plan work, and in the larger companies both the chairman and the secretary devoted their full time to such work, occupying offices in the respondents' premises, equipped with desks and provided with stenographic service. The chairmen of the general councils and, in the larger companies, the secretary also, were allowed expense accounts which were paid by the respondents as routine matters upon vouchers signed by department heads.

On several occasions meetings of the chairmen of all the general councils were called by the respondents for the purpose of imparting information to be reported to their constituents, but never for the purpose of bargaining collectively as a unit. Thus in July 1936, Carlisle, chairman of the board of trustees of Consolidated Edison Company of New York, Inc., and member of the board of directors of each of the respondents herein, called such a meeting to inform it of the restoration of a former pay reduction and, in December 1936, to inform it that there would be no Christmas bonus as had been rumored.

In the early part of 1934, approximately coincidental with the establishment of the Plans, there was formed a labor organization among the employees of the respondents, known as the Brotherhood of Utility Employees, herein called the Independent Brotherhood. It was a national organization, but certain of its locals limited their membership exclusively to the respondents' employees. All six employees named in the amended complaint as having been discriminatorily discharged were members of the Independent Brotherhood, while several of them were organizers of Local No. 103, which had jurisdiction of the employees of New York and Queens Light and Power Company. All six were also members of the Plans and at least one was for a time an officer of the Plan at New York and Queens Light and Power Company. In 1935 certain of these six employees, as stated hereinafter, formulated a petition of grievances, dealing principally with wage increases, for presentation to the management of New York and Queens Electric Light and Power Company. After overcoming

the reluctance of the general council, it was finally presented to the management, but nothing was done concerning it. During the same period the Plan members of one of the departments of Consolidated Gas Company, Inc., set up a committee, headed by two members of the Independent Brotherhood, to investigate the Plan with respect to company domination and pursuant to its mandate the committee filed monthly reports of company domination. Convinced that the Plans were dominated by the respondents, the Independent Brotherhood issued and distributed magazines, pamphlets, circulars, and leaflets attacking the Plans as company-dominated unions. Representatives of the Independent Brotherhood also attended all the hearings before the New York Public Service Commission, involving such matters as rates, and claimed an interest therein by reason of their representation of respondents' employees.

Failure to achieve any success as an independent organization induced the several locals of the Independent Brotherhood in March 1936 to consolidate and affiliate with the I. B. E. W. as one local, Local No. B-752. In March 1937 the members of Local No. B-752 voted to affiliate with the United and thereupon one local, Local No. 1212, was chartered with jurisdiction over only employees of the respondents. All the members of Local B-752 became members of the United Local No. 1212. Local No. B-752 was thereupon suspended by the I. B. E. W. In April 1937 the United announced the formation of a utility division and commenced a vigorous campaign to organize the respondents' employees.

At this junction the respondents instituted a campaign to procure signatures of employees to cards designating their desire for the continuance of the Plans. This campaign was interrupted by the decisions of the United States Supreme Court sustaining the validity of the National Labor Relations Act, for thereupon the respondents discontinued their campaign and abruptly altered their labor policy, as described below.

B. Events Between April 12, 1937, and the Date of Execution of Contracts With the I. B. E. W.

After the United States Supreme Court on April 12, 1937, rendered the decisions sustaining the Validity of the National Labor Relations Act, Carlisle, who was in charge of

the respondents' labor policy, had two conferences concerning the recognition of the I. B. E. W. with D. W. Tracy, the International president of the I. B. E. W. On April 16, 1937, Tracy dispatched a letter to Carlisle demanding recognition of the I. B. E. W., accompanied by a proposed contract providing for recognition of the I. B. E. W. as the representative of its members, a five per cent increase in wages, and a procedure for settling grievances which outlawed strikes and lockouts. On the morning of April 20, 1937, Carlisle called a convention in the board room of Consolidated Edison Company of New York, Inc., of the members of all the general councils of all the Plans, at which he announced that in view of the decisions of the United States Supreme Court a continuance of the Plans with the financial support of the respondents would constitute a violation of the spirit of the National Labor Relations Act, and more particularly, of the provisions of the Doyle-Neustein Bill, which he termed a little Wagner Act, which was then pending in the Legislature of the State of New York and appeared almost certain of enactment. He informed them that therefore he intended to recognize the I. B. E. W. In response to questions from the floor, Carlisle declared that employees were free to join any labor organization, but that the respondents intended to recognize the I. B. E. W. Various comments from the floor indicated that the Plan representatives considered the sudden recognition of the I. B. E. W. as a means of coercing them into transferring their allegiance to the I. B. E. W. Carlisle refused the request of several Plan representatives for a delay of the recognition of the I. B. E. W. until the employees had had an opportunity to discuss the matter.

Harold Straub, chairman of the general council of the Plan at Bronx Gas and Electric Company asked Carlisle whether it was not true that he had hitherto considered unions as unnecessary evils, but now, in view of the United States Supreme Court decisions and the pending Doyle-Neustein Bill, as necessary evils, and as between the I. B. E. W. and the United he preferred that the employees join the I. B. E. W. Carlisle said that this was a very apt statement of his position. Straub testified that Carlisle stated to him also that he thought that the Labor Relations Board of the State of New York would be composed preponderantly of men in sympathy with the American Federa-

tion of Labor and hence that it was the part of wisdom to recognize the I. B. E. W. When Carlisle, himself, testified, he was not specifically questioned on direct examination concerning Straub's testimony on these particular points. Straub also asked Carlisle why recognition was being accorded the I. B. E. W. when its membership among the respondents' employees was negligible. Carlisle replied that the I. B. E. W. had some members and would soon have a great many more. Carlisle, himself, testified that at the time he recognized the I. B. E. W. he knew that its organization among the respondents' employees was incomplete and that the formation of locals and the procurement of membership was to follow recognition and that when that was accomplished contracts with the various locals would be executed. He also testified that at this time he knew that the members of Local B-752 had transferred their allegiance to the United which had commenced a vigorous campaign for membership. It is quite clear that recognition of the I. B. E. W. under these circumstances was intended as a blow to the United, as an aid to the I. B. E. W., and as a strong indication to the employees of the union favored by the respondents.

After Carlisle left the conference he dispatched a letter to Tracy recognizing the I. B. E. W. along the lines of the proposed contract. News of this letter appeared in the early afternoon papers, which led many of the Plan representatives to believe that he had formally recognized the I. B. E. W. even before he had called the conference of general councilmen. The conference continued for a time after Carlisle's departure, and speeches were made characterizing recognition of the I. B. E. W. as a design to force the employees into the I. B. E. W. Upon the adjournment of the conference, the general councilmen proceeded to a meeting of the general council of Consolidated Edison Company of New York, Inc., where the chairman narrated the above events. The general opinion of this meeting also was that recognition of the I. B. E. W. was intended to force membership in the I. B. E. W.

On the afternoon of the same day, Straub called on Colonel Stilwell, vice-president of Consolidated Edison of New York, Inc., with whom Straub, as chairman of the general council of the Plan at Bronx Gas and Electric Company, had discussed Plan matters since the merger of the latter company

in 1936 into Consolidated Edison Company of New York, Inc. Stilwell said that recognition of the I. B. E. W. would be a blow to the Committee for Industrial Organization, of which the United was an affiliate, and was so intended, and that it would be a wise move for the Plans and the employees to go over to the I. B. E. W. and obtain control of it. Upon Straub's request he gave him the name and address of G. M. Bugniazet, International secretary of the I. B. E. W., with whom he could confer concerning ways and means of switching the Plan at Bronx Gas and Electric Company over to the I. B. E. W. The following day Straub called at the address, but merely discussed the aims and policies of the I. B. E. W. with a representative of the I. B. E. W. Later that same day Straub called a meeting of a number of members of the Plan at the Bronx Gas and Electric Company and informed them of his actions. He found among them a strong sentiment for the United and for an independent union with no outside affiliation, while several of them complained that their foremen were applying pressure in behalf of the I. B. E. W.

On the following day, April 22, a conference of 400 employees, mostly members of the various general councils, who, as we have already indicated, were always free to leave their work for Plan affairs, was held in the auditorium of Consolidated Edison Company of New York, Inc., building on Irving Street. Carlisle had been invited to attend, and while awaiting his arrival the men discussed the matter. Three views were presented. Some favored the I. B. E. W., others the United, and others an independent union with no outside affiliation. A motion for a secret ballot on the question among those present at the conference was carried. William P. Ganley, co-chairman of the general council of the Plan at Consolidated Edison Company of New York, Inc., and presiding officer of this meeting, took no action, however. The meeting was adjourned to the company's cafeteria where Ganley read a telegram from Tracy indicating the manner in which the various Plans could come into the I. B. E. W. as locals with the Plan officers as officers of the locals. The meeting growing somewhat restive, a messenger was sent to summon Carlisle. Upon his arrival Carlisle was subjected to such a barrage of questions that the procedure was adopted of formulating three questions which were ad-

dressed to Carlisle by Ganley. The questions and answers were substantially as follows:

Question. Could a vote be taken among the respondents' employees on the matter.

Answer. If such a vote implied that the respondents would bear the expenses of the election, it could not.

Question. Would he stop department heads and foremen from coercing employees into joining the I. B. E. W.?

Answer. Since he had not issued any order to do so, he would not issue any order to stop.

Question. Why were I. B. E. W. organizers allowed to enter the plants and solicit employees during working hours while United organizers were denied that privilege?

Answer. The respondents have never policed their buildings and did not intend to begin now.

A shout from the floor accusing Carlisle of having "sold 40,000 employees down the river" evoked considerable applause.

Carlisle departed and shortly thereafter, upon adjourning, Ganley announced that there would be another meeting on the following day for the purpose of forming an independent union. A meeting for such purposes was apparently never held, but a meeting of the general councilmen of the Plan at Consolidated Edison Company of New York, Inc., called by Ganley, was held in the board room of the company. At this meeting, Ganley and a number of Plan officials decided to see Tracy at the Hotel Roosevelt in New York City. Tracy informed them that the I. B. E. W. intended to establish seven locals and that each of the Plans could shift over to the I. B. E. W. as a corresponding local retaining Plan officers as officers of the local. The Plan officials returned to the meeting and 22 general councilmen signed a petition for an I. B. E. W. charter. They then went back to Tracy and a local was chartered. Such was the birth of Local B-829. Thereafter, on May 4, 1937, the 22 signers of the petition held an election among themselves and elected the officers of the Plan to comparable positions in Local B-829.

After Local B-829 was chartered on April 23, the officials and councilmen of the Plan at Consolidated Edison Company of New York, Inc., availing themselves to the full of their privileges as Plan officials to devote full time to Plan affairs, commenced a campaign for membership in the I. B. E. W.

and were paid their regular salaries by the company. Straub, at first attracted by the idea of going over to the I. B. E. W., grew lukewarm. In the election of May 4, he refused a position as an officer in Local B-829, but continued to assist in procuring members and collecting dues, devoting a large portion of his working hours to the task and receiving his regular salary from the company. He was reproached by Ganley, who had become president of Local B-829, for lack of enthusiasm. Finally, on May 14, he joined the United.

In his talk with Stilwell on April 20, Straub had asked to be transferred to a job under different supervisors, but still in his home area, The Bronx, because in his capacity of chairman of the general council he had antagonized certain supervisors who, upon the dissolution of the Plan, would make it uncomfortable for him. On May 21, 1937, he was transferred to cable-splicing in Manhattan. Upon inquiry he was informed that the transfer was the result of large shifts of workmen in the respondents' system. In this fashion, after he had joined the United and proved himself an obstacle to I. B. E. W. organization in The Bronx, he was transferred from his home area where his influence with the employees was greatest.

The establishment of all the locals of the I. B. E. W. substantially conformed to the pattern of the establishment of Local B-829, with most of the officers of the Plans throughout the respondents' system becoming officers of the corresponding I. B. E. W. locals and continuing to exercise their privileges as Plan officers for several weeks after the I. B. E. W. locals were chartered, devoting all their working hours to I. B. E. W. organization, using the respondents' offices and secretarial services, and utilizing the respondents' expense accounts. During all this time they were paid their regular salaries by the respondents.

Evidence specifically adduced at the hearing discloses that the respondents pursued additional methods of coercing their employees into membership in the I. B. E. W. The department heads and foremen during working hours solicited employees to join the I. B. E. W., and generally assumed the role of I. B. E. W. organizers. The sanction behind the solicitation was clearly revealed in the accompanying advice and admonitions to the effect that the respondents desired them to become members of the I. B. E. W. and that sensible employees would conduct themselves accordingly.

The respondents allowed to I. B. E. W. organizers free access to all the respondents' buildings and permitted them to solicit employees individually and in groups during working hours, while similar privileges were denied to United organizers. I. B. E. W. delegates were also permitted to collect dues on the respondents' premises. They availed themselves, for that purpose, of offices of foremen or other offices or rooms and, in some instances, hung signs upon the doors bearing the legend "Pay A. F. of L. Dues Here." Later the practice of hanging up such signs was discontinued and foremen adopted the practice of telling the employees to go down to some office on the premises and pay their dues. Similar privileges were denied to the United.

I. B. E. W. officers remained in the employ of the respondents, exercising their Plan prerogatives in behalf of the I. B. E. W., for several weeks, and it was only shortly prior to the execution of the contracts between the respondents and the I. B. E. W. locals that they resigned from the respondents' employ to become full time I. B. E. W. officers paid by the I. B. E. W. Carlisle testified that the respondents permitted the Plan officers to retain their offices and to exercise their prerogatives in order to give them an opportunity to wind up their affairs. It appears from the evidence, however, that the respondents knew that the Plan officers had shifted over to the I. B. E. W. and had utilized their Plan prerogatives in behalf of the I. B. E. W. Moreover, it is clear that the respondents had intended as much. Carlisle also testified that he had given no orders to the respondents' department heads and foremen to act in behalf of the I. B. E. W. Express orders, however, were unnecessary as the respondents' position had been made abundantly clear, with the result that their supervisors took the steps appropriate for its attainment.

The evidence reveals the delineations of the respondents' design to dictate to their employees the choice of their bargaining representative. The first step was to favor the I. B. E. W. by according it recognition at a time when its membership was negligible and its organization hardly commenced and when the respondents knew that the United was the only active labor organization among its employees. The next step was to deliver over the Plan organizations to the I. B. E. W. by making the respondents' position in the

matter clear to the Plan representatives. Then followed the organizational drive in behalf of the I. B. E. W. by department heads, foremen, and Plan representatives, leading up to the stage of organization contemplated by Carlisle and Tracy as sufficient to justify the execution of contracts.

C. Execution of the Contracts With the I. B. E. W. Locals

After the I. B. E. W. had established its seven locals and had procured a membership therein, the respondents, in the period between May 28 and June 16, the latter date being subsequent to the commencement of the hearing, entered into seven substantially similar contracts with the seven I. B. E. W. locals.² The contracts conformed in most respects to the proposed contract which accompanied Tracy's demand for recognition on April 16. The contracts in terms recognized the I. B. E. W. as the representative of its members

² The contracts were executed on the following dates:

1. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B830, applicable to gas workers. Respondents' Exhibit No. 17.

2. June 15, 1937—Contract between Consolidated Edison Company of New York, Inc., and Local No. B829, applicable to electric workers. Respondents' Exhibit No. 18.

3. May 28, 1937—Contract between Brooklyn Edison Company, Inc., and Local B-825. Respondents' Exhibit No. 19.

4. June 1, 1937—Contract between New York and Queens Electric Light and Power Company and Local No. B-839. Respondents' Exhibit No. 20.

5. May 28, 1937—Contract between Westchester Lighting Company and The Yonkers Electric Light and Power Company and Local No. B-832. Respondents' Exhibit No. 21.

6. June 16, 1937—Contract between New York Steam Corporation and Local No. B-826. Respondents' Exhibit No. 826.

7. The respondents did not introduce into evidence the contract executed between Consolidated Telegraph and Electrical Subway Company and an I. B. E. W. local, but stated that the contract was substantially similar to the above contracts and executed during the same period.

and were applicable only to such members.³ The contracts also provided for certain wage increases and a procedure for settling grievances which outlawed strikes and lockouts, and prohibited discrimination by the respondents against any employee because of membership in the I. B. E. W. and coercion by the I. B. E. W. of any employees into joining the I. B. E. W. or solicitation of membership on the respondents' time and property.

Carlisle testified that he was aware that when recognition was conferred upon the I. B. E. W. on April 20, 1937, it had not as yet completed its organization and that such recognition contemplated the establishment of locals, with committees of which contracts would be subsequently executed. He further stated that at the time of the execution of the contracts he was in possession of no definite information concerning the size of the membership in each local, except newspaper reports. He admitted that the I. B. E. W. did not discuss the matter at that time. It was only on July 29, 1937, after the contracts had been made and the presentation of the Board's case in the hearing herein completed, that the I. B. E. W. submitted a statement⁴ of its membership to him. This consisted merely of a type-written statement showing the number of eligible employees and the number of members in each local. The statement indicated that a majority of the employees eligible for membership in each local were members of the local, except in the case of Local B-829, to which were eligible 13,200 electric employees of Consolidated Edison Company of New York, Inc.

³ Recognition of the I. B. E. W. was accorded by the particular respondent granting the contract in the first sentence of Article II of each contract, as follows:

"The . . . Company recognizes the Brotherhood as the collective bargaining agency for those employees who are members of The Brotherhood."

The statement of the applicability of each contract is contained in Article I thereof, as follows:

"This agreement shall apply to all employees of the . . . Company who are members of the Brotherhood . . ."

⁴ Respondents' Exhibit No. 16.

This latter exception has particular significance in view of Carlisle's construction of the contracts as exclusive collective bargaining agreements.

Carlisle testified that the contracts were applicable to all employees and were exclusive collective bargaining agreements, i.e., that the respondents would not enter into collective bargaining agreements with any other labor organizations during the existence of the contracts. He thus in effect admitted that he had recognized and entered into contracts with the I. B. E. W. locals as the exclusive bargaining representatives of the respondents' employees at a time when he did not know the size of their membership and when even as late as June 29, Local B-829 did not have a membership of a majority of the employees within its jurisdiction.

It is clear from the evidence that the contracts were not the result of unhampered bargaining, but were rather the culmination of a plan by the respondents to select the I. B. E. W. as the exclusive representative of the respondents' employees and at the same time deal a blow to the United which they opposed. Carlisle's interpretation of the contracts, despite the express limitation of the representation of the I. B. E. W. to its own membership, discloses the force of the blow dealt the United, namely, the denial of the opportunity to bargain collectively with the respondents during the life of the contracts.

D. Conclusions as to the Respondents' Relations With the I. B. E. W.

We conclude that after April 12, 1937, the respondents deliberately embarked upon an unlawful course of conduct, as described above, which enabled them to impose the I. B. E. W. upon their employees as their bargaining representative and at the same time discourage and weaken the United, which they opposed. From the outset the respondents contemplated the execution of contracts with the I. B. E. W. locals which would consummate and perpetuate their plainly illegal course of conduct interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed to them under Section 7 of the Act. It is clear that the granting of the contracts to the I. B. E. W. by the respondents was a part of the respondents' unlawful course of conduct and as such constituted

an interference with the rights of their employees to self-organization. The contracts were executed under such circumstances that they are invalid, notwithstanding that they are in express terms applicable only to members of the I. B. E. W. locals. If the contracts are susceptible of the construction placed upon them by the respondents, namely, that they were exclusive collective bargaining agreements, then, a fortiori, they are invalid.

In order to establish conditions for the exercise of an unfettered choice of representatives by the respondents' employees, the respondents will be ordered to cease and desist from giving effect to the contracts with the I. B. E. W. locals, from recognizing the I. B. E. W. as the exclusive bargaining representative of their employees, and from their other unlawful conduct; and to post notices that they will so cease and desist, that their employees are free to join any labor organization, and that the respondents will bargain collectively with any labor organization entitled thereto.

E. Employment of Industrial Spies

The complaint alleges that the respondents had employed and were employing industrial spies or under-cover operatives for the purpose of disclosing to them the activities of their employees in and on behalf of labor organizations. The respondents admitted the employment of detectives, but denied that it was for the purpose of investigating the union activities of their employees. The respondents asserted that in any event the employment of detectives did not extend beyond November 1936 and that consequently the controversy on this issue has become moot.

Uncontroverted evidence discloses that the respondents engaged the detective services of Railway Audit and Inspection Company, herein called the Inspection Company, from October 1933 through October 1936. The manager of the New York office of the Inspection Company testified that the services rendered to the respondents included investigation of the union activities of the respondents' employees. Frequently the respondents would send circulars, leaflets, and other literature to the Inspection Company for investigation by its detectives. Among the various types of literature of this character were included the circulars and leaflets of the Independent Brotherhood, some of which contained the names of the leaders of that organization.

Detectives of the Inspection Company also covered several of the meetings and conventions of the Independent Brotherhood throughout the year 1935. The Inspection Company made reports of its investigations and delivered them to the respondents.

The manager of the Inspection Company and one of the detectives who did the investigating, testified that detectives trailed Stephen L. Solosy, named in the complaint, and Philemon Ewing, both organizers for the Independent Brotherhood in Manhattan, in April 1935. The detective who trailed Solosy was given a picture of him and told to trail him, which he did for two days, after which time he was replaced by another detective whose report was delivered to the respondents. Solosy was unaware that he was being shadowed, but Ewing was exasperated by the ineptitude of the detective who trailed him and finally turned around and entreated him to perform his duties with more adroitness. Both Solosy and Ewing were discharged on January 17, 1936, and as we find below, one of the factors leading to Solosy's discharge was the report of his activities made by the Inspection Company. The respondents apparently still have in their possession the reports of the Investigation Company and so have the power to utilize them as a basis for future discriminatory action against their employees.

The respondents' contention that the controversy is moot on this issue because the evidence does not show that the respondents employed the Inspection Company for any purposes after November 1, 1936 is without merit. The evidence clearly discloses that the respondents engaged in an unfair labor practice for three years, up to a time not long prior to the filing of the charge herein. A discontinuance at that time of hiring one outside detective agency for that purpose is no assurance that the practice may not have been carried on by other outside agencies or by the respondents' own employees, or that the practice will not be resumed in the future. The respondents have not stipulated that they would not engage in this practice, but on the contrary have from the outset denied the jurisdiction of the Board to take any action in this proceeding.

F. The Discriminatory Discharges

1. Wersing, Greulich, and Wagner.

The complaint alleged that on November 29, 1935, the respondents discharged, and thereafter refused to reinstate,

Martin A. Wersing, Julius A. Greulich, and Michael A. Wagner, because of union activities. The answer avers that they were discharged for other reasons. Since all three men were employed by New York and Queens Electric Light and Power Company, performed substantially similar work, were the organizers and officers of Local No. 103 of the Independent Brotherhood, were discharged at the same time, and were given the same explanation for their discharge, we will first narrate the employment history of each of them and then discuss their union activity and discharges as a group.

Wersing.—Wersing began work for the respondents on October 8, 1929, as a second grade clerk at a weekly salary of \$22.00. All his work was performed during the night. After about six months he was transferred to other night work called "cut in and cut out," which involved making initial and final bills on consumers' accounts. Two months thereafter he received the regular two dollar weekly salary increase which followed upon a satisfactory probationary period. In 1933 he was transferred to day work at the personal request of J. Smith, a supervisor. Wersing found the work dull and about eight months later was transferred back to night work. Early in 1935 he filed an application for a day work position in response to a posted notice that the position was available. The position was obtained by an employee with less seniority than Wersing. A committee of the Independent Brotherhood took the matter up with the respondents and were informed that Wersing had filed his application too late. Subsequently, in May 1935, he was transferred to day work in the stores accounts division of the auditor's department. Although he replaced an employee with a first grade clerk rating, his own rating continued as second grade clerk. He brought this fact to the attention of his supervisor and later of the personnel bureau, from which he received a final, unfavorable communication about two weeks before his discharge.

While Wersing was not an exceptional employee, he performed his duties competently. When he was employed on night work his supervisor conferred some responsibility upon him and allotted to him the instruction of new employees as an additional duty. His supervisor on the work which he was performing prior to his discharge considered his work satisfactory. At the time of his discharge his

weekly salary was \$23.00. A general reduction in pay in 1933, which was not fully restored, accounts for the fact that his salary was less at this time than at an earlier stage of his employment.

Greulich.—Greulich began his employment with the respondents on October 3, 1929, as a clerk at a weekly salary of \$25.00. He received the customary two dollar weekly salary increase after six months' employment. In 1933 his pay was reduced $8\frac{1}{3}$ per cent in conformity with the general pay reduction enforced throughout the respondents' system. In May 1934, one-half of the pay reduction was restored. Thereafter his weekly salary was increased to \$27.00 as a result of a reclassification of his position. He received an additional increase in salary subsequently, so that at the time of his discharge his weekly salary was \$28.75.

Greulich, like Wersing, worked in the stores accounts division of the auditors' department. Greulich devoted a large portion of his time to writing letters in response to a particular kind of correspondence and was the only one in the division performing that type of work. He also performed the added task of checking the work of twelve girls. He was never disciplined or suspended, but, on the contrary, was commended by his supervisor, at whose request he undertook to write items for the respondents' magazine.

Wagner.—Wagner began his employment with the respondents on July 23, 1929, as a first grade clerk at a weekly salary of \$27.00. Six months thereafter he received the regular two dollar increase in salary. In March 1931 he was advanced to the position of accounting assistant in the fixed capital division of the auditors' department at a weekly salary of \$32.00. His work consisted of preparing the monthly authorized fixed capital expenditure reports. He was the only one in the department who performed the work on the figures. In November 1934, he received an increase of \$3.83 in his weekly salary as a result of a reclassification of his position. At the time of his discharge his weekly salary was \$34.50.

Wagner's work was frequently commended by his supervisors. The respondents admitted and their records show that Wagner was rated as an exceptionally able and diligent employee.

Their union activity.—All three men became members of the national organization of the Independent Brotherhood

in February 1934. Thereafter they organized Local No. 103 among the employees of New York and Queens Electric Light and Power Company. In July 1934 Local No. 103 held its first meeting, at which Wersing was elected acting president and Greulich and Wagner were elected to the Executive Board. Throughout the year 1934 they were actively engaged in securing membership and in distributing circulars, leaflets, and a magazine called "The Tower Man", all issued by the national organization of the Independent Brotherhood. They became members of the Plan in April 1934, but Wersing resigned therefrom in December 1934, and Wagner in the early part of 1935. In September 1934 they formulated a petition of grievances, concerned chiefly with the restoration of the general pay reduction, which was finally presented to the management by a committee appointed by the general council of the Plan, after much persuasion by Wersing, Greulich and Wagner. They asserted that the restoration in 1934 of one-half of the 8 $\frac{1}{3}$ per cent pay reduction was induced by their activity for wage increases. Thereafter they persistently attacked the Plan as a company-dominated union. In February 1935 Wersing was elected president of Local No. 103, Greulich vice-president, and Wagner treasurer. After their election to these offices they informed their supervisors of that fact by letter and received either written or oral acknowledgment of their letters. Thereafter Local No. 103 issued its own leaflets, circulars, pamphlets, and a monthly magazine called "Live Wire", attacking the Plans, listing grievances against the respondents, and explaining its own aims and policies. A number of articles appearing therein were over the signatures of Wersing and Greulich who wrote most of the Local's literature of this character. They also were actively engaged in soliciting membership by visiting employees at their homes. All this activity continued throughout 1935, and if anything, was intensified shortly prior to their discharge.

In March 1935 Wersing and Greulich conferred with Harry Snyder, president of New York and Queens Electric Light and Power Company, with respect to the assignment of an employee with less seniority to a day work position for which Wersing had applied, as related above. In August 1935 Wersing became President of the joint board composed of representatives from all the Independent Brotherhood locals in New York City. In the fall of 1935

there were rumors of impending lay-offs. Local No. 103 and the joint board, under the guidance of Wersing, Greulich, and Wagner, undertook to prevent the impending lay-offs by appearing at rate hearings before the Public Service Commission, by writing to Governor Lehman, Mayor La Guardia, and Chairman Maltbie of the Public Service Commission. They also issued a considerable quantity of literature in opposition to the impending lay-offs.

Just prior to their discharge there appeared in the "Live Wire" a signed article by Wersing entitled "Turkeys or Lay-offs for Thanksgiving". About two weeks prior to their discharge Greulich, who was still a member of the Plan, appeared at a meeting of the Plan members to distribute Independent Brotherhood literature and was promptly ushered out by Plan officials. The next day his supervisor, without especial rancor, informed him that he did not consider his actions on the preceding day as strictly ethical. On November 15, 1935, a committee composed of Wersing, Greulich, and Wagner, had a conference with Harold Dean, Vice-president and general manager of New York and Queens Electric Light and Power Company, concerning the discharge of James Mannix, an active member of the Independent Brotherhood. They were satisfied with the reasons given for his discharge and did not press the matter further. Dean, however, expressed a strong antipathy to the presumption of the committee in attempting to interfere with the exercise of his discretion to discharge employees.

Thus immediately preceding their discharge their union activity had become intensified, while the chief result of their interview on November 15, with Dean, who was in charge of the execution of the respondents' labor policy at New York and Queens Electric Light and Power Company, was the likelihood that the memory of a disagreeable episode would linger in Dean's mind.

Their discharge.—All three men were discharged on November 29, 1935, without notice, but receiving two weeks' pay in lieu of notice. Wersing and Greulich, who both worked in the stores account division of the auditor's department, were notified of their discharge at the same time by their supervisor, who told them to see Mr. Payne in the Personnel Bureau. When they arrived in Payne's

outer office the next morning, they saw Wagner leaving Payne's office. Wersing and Greulich had separate interviews with Payne. The accounts of all three men of their interviews with Payne are substantially the same. Payne informed them that they were being laid off because the respondents were discontinuing a department and that it was necessary to absorb a portion of the employees employed in that department into other departments. He stated that married men were being given preference over single men and that since all three of them were single their turn to be laid off had arrived. Each of the three men pointed out that other single men and girls with less seniority were retained, and requested an explanation. Payne was unable to explain this fact. The respondents have not requested any of the three men to return to their employment.

The respondents maintain that the three men were laid off for the following reason. The inventory department was engaged in compiling reports required by the Public Service Commission. A substantial number of the employees in that department were transferees from other departments. The department had grown into a body of 300 employees. In 1935 the Public Service Commission's requirements as to reports were so greatly reduced that the respondents found it necessary to discontinue or substantially reduce the department. In transferring employees from the inventory department back to other departments the respondents adopted the standard of favoring married men as against single men, all other things being equal. It was asserted that the discharge of the three men was the consequence of the application of this standard.

The respondents' contention that the inventory department was being reduced and transfers of employees made to other departments, thereby causing lay-offs of employees in such other departments, is supported by the evidence. In August 1935, 25 employees were laid off as a consequence of the application of this policy, but no employees were laid off in the auditors' department. On November 29, 1935, the three employees were the only employees laid off in their respective divisions. Dean, in his testimony, did not explain why certain single employees with less seniority were retained, except for the general statement that the department heads in the exercise of their judgment, determined

that a number of single employees with less seniority than these three men were more deserving of retention in their jobs because of special qualifications. Such an explanation, however, is unsatisfactory in the case of Wagner, at least. According to the respondents' own records he was regarded as an exceptionally able and diligent employee. In the application of the respondents' standard of preference to married men, other things being equal, Wagner would certainly not be the first and only man in his division to be laid off. Since he was laid off at the same time as Wersing and Greulich, his fellow officers in the Independent Brotherhood, a finding that he was discharged for union activity would be strong evidence that the other two men were discharged for the same reason.

It is significant that by the discharge of these three employees the respondents eliminated from their employ all the officers of Local No. 103 at a time when their union activities were beginning to prove troublesome to the respondents. Dean's explanation for their discharge, particularly the discharge of Wagner, is inadequate and not persuasive, in the face of the retention of a number of single men and girls with less seniority in their divisions, and an even larger number in their department. The evidence indicates rather that the respondents unfairly utilized the lay-offs consequent upon the discontinuance of the inventory department as a means of discharging the three officers of the Independent Brotherhood, whom they wished to eliminate from their employ because of their union activity.

We find that Wersing, Greulich, and Wagner were in fact discharged because of their activities in the Independent Brotherhood. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Since his discharge Wersing has devoted all his time to union affairs, and all his earnings from that time until the date of the hearing have been as a union officer. At the time of the hearing he was president of the United Local No. 1212 and chairman of the field representatives of the utilities division of the United. Greulich has been employed since March 1936, by the Federal Writers' Project. Wagner was out of employment until May 13, 1937, when

he secured employment with a laundry company at a weekly salary of \$17.00. All three men desire their jobs back. We find that Wersing, Greulich, and Wagner have not, since their discharge, obtained any other regular and substantially equivalent employment.

2. Kennedy and Emler

The complaint alleged that on June 19, 1936, the respondents discharged, and thereafter refused to reinstate William J. Kennedy and John F. Emler, because of union activity. The answer avers that they were discharged for other reasons. Both men were employed as linemen in the overhead bureau of New York and Queens Electric Light and Power Company, were discharged on the same day, and were given identical explanations for their discharge. We will relate the history of the employment and the union activity of each of them separately and then discuss their discharges as a single incident.

Kennedy—Kennedy worked for this company during 1923 and 1924 as a meter-tester. He resigned and subsequently reentered its employ on January 18, 1928, as a first grade lineman's helper at \$29.90 weekly. In 1929 he became a third class lineman at \$31.90. Thereafter he was advanced to the position of second grade lineman and in 1934 to that of first class lineman, in which position he was employed at the time of his discharge at a weekly salary of \$40.48. His steady advancement is an indication of his competency as a workman. He had also gained experience in underground work and as a "troubleshooter", the latter job ranking just above first class lineman. The respondent's employment records show that during the year prior to his discharge, Kennedy was absent from his work for more than normal periods, but this was caused by illness and time spent in a hospital. He testified that his illness arose out of the character of his work, which often involved working in muddy ditches during inclement weather, and that the respondents' own doctor treated him and advised him to go to a hospital.

In 1934 Kennedy became a member of the Plan and was elected bureau representative for more than 300 employees in the overhead bureau. Shortly thereafter he became convinced that the Plan was a company-dominated union and was not hesitant about stating his views. In November

1934 he met Wersing, joined the Independent Brotherhood, and thereafter became very active in soliciting members. In February 1935 he was elected general manager of Local No. 103. At several meetings of the Plan in the early part of 1935 he spoke of the futility of the Plan. At approximately this time he sought to resign from his position as overhead bureau representative in the Plan. He communicated his intention to his supervisor, who urged him not to resign as it would create an unfavorable impression toward the Plan. Kennedy yielded, but was later informed by the chief officer of the Plan that his supervisor had suggested expelling "that radical", Kennedy, from the Plan. At a meeting of the Plan held thereafter Kennedy taxed his supervisor with having uttered the above statement, which his supervisor parried with a query as to what other course was open to him as a representative of the management. At a special meeting of the Plan held shortly thereafter, one of the respondent's officials made an address containing references to certain radicals and agitators. Kennedy arose and remarked that it was obvious that the references were addressed to him, and that if they denominated his activities agitation, then he was an agitator. The respondent's official then made some remarks about misinterpretation and dropped the matter. At the Plan election in June 1935 Kennedy refused renomination. In August 1935 he was elected president of the national organization of the Independent Brotherhood, resigning from his position as general manager of Local No. 103, which was taken over by Wersing.

After the discharge of Wersing, Greulich, and Wagner, Kennedy was selected as chairman of a committee to negotiate with the respondent concerning the discharge of the three men. The committee had a conference with the president of the New York and Queens Electric Light and Power Company in December, 1935, at which Mayor La Guardia was present, but nothing was accomplished. The committee reported back to the members of Local No. 103, and were empowered by them to call a strike if necessary. Two representatives from the Labor Department of the State of New York strove to obtain a settlement with the respondents, but were unsuccessful. Kennedy decided not to call a strike, as the Christmas season was considered inopportune.

In April 1936 the Independent Brotherhood affiliated with the I. B. E. W. and Kennedy resigned his presidency of the Independent Brotherhood to become a rank and file member of the I. B. E. W. He decided at this time to run again for office in the Plan. On June 11, 1936, he was elected representative for the overhead bureau. He was discharged a week later on June 19, 1936.

Emler.—Emler began his employment with the respondent in July 1927 as a clerk at a weekly salary of \$25.00. Shortly thereafter he was transferred to meter-setting at \$27.00 weekly. At approximately six months' intervals he was advanced to lineman's helper in the overhead bureau, to third class lineman, to second grade lineman, and finally to first class lineman, the position he held at the time of his discharge at a weekly salary of \$40.48. There had never been any complaints concerning his work and his steady advancement is testimony of his competency.

In April 1935 he became a member of the Independent Brotherhood. He devoted his spare time to organizational activity with Wersing and Greulich and talking in behalf of the Independent Brotherhood. In September 1935 he was elected to the executive board of Local No. 103. He was a member of the committee which negotiated for the reinstatement of Wersing, Greulich, and Wagner, and participated in the negotiations. He was also a member of the committee which in December, 1935, was empowered to call a strike. At that time he was advised by his foremen that it would be foolish to call a strike. He continued his union activities until the time of his discharge on June 19, 1936.

Their Discharges.—On June 17, 1937, Kennedy and Emler, who were working on different field jobs, were informed by their foremen that Mr. Payne at the Personnel Bureau wished to see them. They had separate, but substantially similar, interviews with Payne. Payne informed them that he had bad news, that he had orders from the respondents to lay off "surplus employees", and that since they were surplus employees they were being laid off. Both men asked him the manner in which eight years of continuous service had achieved for them the status of surplus employees, but he was unable to explain. He told them that there was a possibility of securing work with Consolidated

Edison Company of New York, Inc., and gave them the name of a personnel officer of that company. Both men called there that afternoon, but were unable to see the personnel officer. The next morning they succeeded in obtaining an interview, at which they were questioned concerning their ability to perform certain technical electrical work. On learning that they were not qualified for such work, the personnel officer made some remarks about jobs as linemen's helpers at \$30.00 a week, which were followed by the expression of his opinion that these jobs were probably all filled anyway. On June 19 they returned to Payne and were formally laid off, receiving their separation allowances of two weeks' pay for each year of service. Four other men were discharged during the same period, of whom two were union men and two were not. One of the nonunion men, Baake, received employment from Consolidated Edison Company of New York, Inc., while the other returned to his former job the next day. Kennedy testified that both he and Emler had seniority over a large number of employees in their bureau, and that they were the only first class linemen who were laid off, while there had been no prior discharges of first class linemen.

In December 1936 Payne notified Kennedy of an opportunity to secure employment with another public utility company, New York Dock Company. Kennedy notified his union, which in turn notified Emler. Emler called upon Payne who told him to apply for work at the New York Dock Company, adding as a parting thrust that it would be embarrassing for the respondents if Emler resumed his "funny business" at his new job. Emler secured a lineman's job with the New York Dock Company, but at a weekly salary of \$30.00, the salary paid to a lineman's helper by the respondents. He is still so employed at a weekly salary of \$35.00. The respondents have not requested either Kennedy or Elmer to return to their employment.

The respondents contend that the discharges of Kennedy and Emler resulted from the reductions in the overhead bureau necessitated by the gradual change in the character of the work in Queens from overhead to underground. A number of the overhead workers were trained for underground work, while others had to be laid off. In this group were Kennedy and Emler. Dean, who testified to the above,

did not adequately explain why Kennedy and Emler were laid off, while men with less seniority were retained; nor did he adequately negate Kennedy's statement that after his discharge the men in the overhead bureau were placed on a six day week and that other men were transferred to his department.

It is most significant that the discharges occurred within a week after Kennedy's election as Plan representative for the overhead bureau. He had proved himself a source of trouble to the respondents when he previously held that position, and it was certain that he would now renew his activity within the Plan in opposition to the respondents' domination of the Plan. His election to that position, in spite of his open affiliation with an outside union, is an indication of the influence he wielded among the employees of the overhead bureau. Discharge would automatically terminate his membership in the Plan, or a transfer to another of the respondents' companies would automatically make him a member of the Plan of such other Company where he would not retain his position as a bureau representative. The evidence points to this as the true explanation for the course adopted by the respondents of giving him a choice between discharge and a transfer to an inferior position in another of the respondents' companies.

Emler was the last of the group associated with Wersing, Greulich, Wagner and Kennedy in the organization of Local No. 123 of the Independent Brotherhood. His discharge or transfer from Queens, coupled with that of Kennedy, would serve to remove the two principal, active union men who were associated with the three men originally discharged. Payne's admonition to him in December 1936 not to resume his "funny business" at the New York Dock Company clearly indicates how long-lived was the recollection of Emler's union activities in the minds of his supervisors.

Although the evidence supports the respondents' contention that the overhead bureau was being gradually reduced because of the change in the character of the work in Queens from overhead to underground, we find that the lay-offs incidental thereto were merely utilized to screen the respondents' true motive. We find that Kennedy and Emler were in fact discharged because of their union activity. The respondents thereby discriminated in regard to hire and

tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Kennedy operated a private club after his discharge, but testified that it was a losing venture. Since March 1937 he has been engaged as a paid organizer in the utilities division of the Committee for Industrial Organization. Emler has been working for New York Dock Company since December 1936 at a lower salary than that which he received in the employ of the respondents. Both Kennedy and Emler desire to return to their former positions in the employ of the respondents.

We find that Kennedy and Emler have not, since their discharges, obtained any other regular and substantially equivalent employment.

3. Solosy

The complaint, as amended, alleges that the respondents discharged Stephen L. Solosy on January 17, 1936, and thereafter refused to reinstate him, because of union activity. The answer avers that he was discharged for other reasons.

Solosy commenced work in October 1928 as a tester in the laboratory of Consolidated Gas Company of New York, which is now Consolidated Edison Company of New York, Inc. He left this employment in November 1928, but returned to work in January 1929 and continued in the respondent's employ until his discharge. After having worked in the laboratory for the first four months at a weekly salary of \$20.00, he was transferred to work on instruments known as Thomas calorimeter inspectors, which measured the B. t. u. content of gas. His job was concerned with maintaining, servicing, repairing, and overhauling those instruments. At that time there were twenty-seven such instruments, situated at different places in the respondents' entire system. Solosy's work was thus performed in different places. He received periodic increases and at the time of his discharge was receiving a weekly salary of \$33.54. No complaints or reprimands concerning his work were made. His steady increases in pay attest his competency.

Early in 1934 he became a member of the Federation of Architects, Chemists, Engineers, and Technicians, an independent union. Shortly thereafter he joined the Plan.

The members in his department elected him and Philemon Ewing to head a committee to investigate the Plan. He served on this committee for three months, rendering monthly reports to the effect that the Plan was a company-dominated union. In the latter part of 1934 he and Ewing joined the Independent Brotherhood. Both of them did a great deal of organization work in Manhattan for the Independent Brotherhood. His activity became open and known to the respondents at least as early as March 1935. As we have stated previously, during April 1935 he was trailed by detectives, and reports concerning his and Ewing's activities were filed with the respondents. In March 1935 Solosy and Ewing began to publish and distribute a monthly paper called the "Gas Man". Its last issue appeared in November 1936. Both Solosy and Ewing solicited employees at their homes for membership in the Independent Brotherhood, securing at least 25 members in the latter part of 1935. Solosy and Ewing were the only employees in their department who were vigorously engaged in union activity.

Solosy and Ewing were discharged at the same time and in the presence of each other. Solosy was told that he was being laid off because the respondents were shutting down the "A" plant of the Astoria Light, Heat, & Power Company, thereby necessitating the laying-off of a number of employees. It appears that the "A" plant was in fact shut down, probably because of the decrease in the amount of gas sold. Solosy was not given previous notice of his discharge, but was given his separation allowance. He pressed his supervisor for further reasons concerning his discharge and received the following cryptic reply, "You know more about it than I do". In answer to a question whether he would ever be called back, his foreman said that he thought not. The respondents have not requested Solosy to return to their employ.

It appears from the evidence that although there were a few others discharged at the same time with Solosy and Ewing, Solosy was the only one in his division who was discharged. There were only seven employees in his division. Solosy testified that of the other six employees he had seniority over two.

It is significant on the one hand that Solosy and Ewing were the only active union men in their department and that their activities were investigated by detectives and reports

of their activities filed with the respondents. On the other hand there is an absence of any adequate explanation for Solosy's discharge while two fellow employees with less seniority were retained. The evidence clearly indicates that the reduction of employees necessitated by the shutting down of the "A" plant was utilized as a screen to conceal the true motive for his discharge.

When we consider all the six discharges involved in this case, it is apparent that the respondents succeeded in eliminating from their employ all the principal organizers and officers of the Independent Brotherhood. Their success was too complete to have been a consequence of the disinterested operation of reductions in personnel.

At the hearing the respondents were not allowed to introduce the testimony of Solosy's supervisors when offered at the continuance on July 6, 1937. The respondents offered no good reason for their failure to produce these witnesses at the close of the Board's case on June 24, 1937. They cannot complain of the Board's refusal to admit the testimony when the hearing was resumed two weeks later for the purpose of receiving the testimony of Carlisle and Dean.

We find that Solosy was in fact discharged because of his union activity. The respondents thereby discriminated in regard to hire and tenure of employment in order to discourage membership and activity in a labor organization, and interfered with, restrained, and coerced their employees in the exercise of the rights guaranteed in Section 7 of the Act.

Solosy has been unemployed since his discharge. He desires to return to his former position in the employ of the respondents. We find that Solosy has not, since his discharge, obtained any other regular and substantially equivalent employment.

IV. Effect of the Unfair Labor Practices Upon Commerce

Upon the whole record we find that the activities of the respondents set forth in Section III above, occurring in connection with the operations of the respondents described in Section I above, have a close, intimate, and substantial relation to trade, traffic, commerce, transportation, and communication among the several States and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

Upon the basis of the foregoing findings of fact and upon the entire record in the proceeding, the Board makes the following conclusions of law:

1. United Electrical and Radio Workers of America, and its predecessor unions, and International Brotherhood of Electrical Workers are labor organizations within the meaning of Section 2 (5) of the Act.

2. Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy were, at the times of their discharges, and at all times thereafter, employees of the respondents, within the meaning of Section 2 (3) of the Act.

3. The respondents, by discriminating in regard to the hire and tenure of employment of Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy and thereby discouraging membership in United Electrical and Radio Workers of America and its predecessor unions, have engaged in and are engaging in an unfair labor practice, within the meaning of Section 8 (3) of the Act.

4. The respondents, by interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed in Section 7 of the Act, have engaged and are engaging in unfair labor practices, within the meaning of Section 8 (1) thereof.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

6. The respondents have not engaged in unfair labor practices within the meaning of Sections 8 (2) of the Act.

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting

Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood

of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

Signed at Washington, D. C., this 10th day of November, 1937.

J. Warren Madden, Chairman; Edwin S. Smith, Member; Donald Wakefield Smith, Member, National Labor Relations Board. (Seal.)

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC.,
ET AL., Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review an Order of the National Relations
Board

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETI-
TION TO REVIEW AND REQUEST FOR THE ENFORCEMENT OF
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed
December 6, 1937

To the Honorable, the Judges of the United States Circuit
Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board (here-
inafter called the Board) by J. Warren Madden, as Chair-
man and Member of said Board, and Edwin S. Smith, and

Donald Wakefield Smith, as Members thereof, and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. A., sec. 151 et seq.), files this answer and request for the enforcement of an order of the Board. In filing this answer and request for enforcement, the Board feels obliged to call the Court's attention to the unduly prolix and argumentative character of the so-called petition to review. It does not conform to the requirements of a pleading and to proper practice under the National Labor Relations Act. It is in reality in the nature of a lengthy brief, accompanied by reprints of portions of the record, upon points petitioners will make when the case is subsequently heard before this Court. As a consequence, the Board has found it necessary in answering numerous paragraphs of the petition to refer the Court to the actual record of the proceeding before the Board, since any attempt to answer fully the argumentative and incomplete allegations of those paragraphs would require the reproduction in this answer of a considerable part of the entire record before the Board.

1. The Board admits each and every allegation contained in paragraphs "1," "2," "3," "4," "5," "6," "7," "8," "9," "10," "11," "12," "13," "14," and "15" of the petition to review, except that it denies that the petitioners and each of them are engaged in a local business; and further answering, avers that the operations of petitioners and each of them have a close, intimate and substantial relation to trade, traffic, commerce, transportation, and communication among the several states and with foreign countries.

2. The Board admits each and every allegation contained in paragraphs "16" and "17" of the petition to review.

3. The Board denies each and every allegation contained in paragraph "18" of the petition to review, except that it admits that following the enactment of the National Industrial Recovery Act in 1933 certain organizations known as Employees' Representation plans (hereinafter called the Plans) were established among the employees of each of the petitioners and of the companies which were merged in 1936 into Consolidated Edison Company of New York, Inc.; and further answering, avers, however, that the Plans were established with the assistance and at the behest of

petitioners, that the organization and operation of the Plans was at all times financed exclusively by petitioners, that petitioners' employees became members of the Plans because such action accorded with the patent desire of petitioners, that although the Plans were established as a means of purported compliance with the National Industrial Recovery Act and for purposes of collective bargaining with petitioners, no collective bargaining activities took place, that as a result of this and the failure of certain of petitioners' employees to secure action on a petition of grievances through the general council of the Plans and of a subsequent investigation of the Plans, there arose a conviction among petitioners' employees that the Plans were under petitioners' domination, and that thereafter, and as a result of the foregoing, there was formed in March 1937 Local No. 1212 of the United Electrical and Radio Workers of America, comprising all of the members formerly belonging to Local No. B-752 of the International Brotherhood of Electrical Workers (hereinafter called the Brotherhood), and that when Local No. 1212 in April 1937 instituted a campaign to organize petitioners' employees, petitioners countered with a drive to procure the signatures of their employees in favor of a continuance of the Plans, which said drive by petitioners was interrupted by the decisions of the United States Supreme Court upholding the validity of the National Labor Relations Act.

4. The Board admits each and every allegation contained in paragraph "19" of the petition to review; and further answering, avers, however, that, on or about the time that petitioners notified their employees or the representatives of the Plans that they would no longer continue their financial support of the Plans, petitioners set forth their intention immediately to recognize the Brotherhood in the place and stead of the Plans and expressed through their principal executive officer their preference that their employees join the Brotherhood, despite the fact that at that time petitioners were aware of the meager membership of their employees in the Brotherhood, despite the fact that petitioners at that time knew that the members of Local B-752 of the Brotherhood had transferred their allegiance and became members of Local 1212 of the United Electrical and Radio Workers of America, despite the opinion of the Plan representatives that the sudden recognition of the

Brotherhood was a means of coercing them into joining the Brotherhood, and despite the request of several Plan representatives for a withholding of recognition of the Brotherhood until petitioners' employees had an opportunity to discuss the matter.

5. The Board admits each and every allegation contained in paragraph "20" of the petition to review; and further answering avers, however, that the alleged contractual relations between petitioners and the Brotherhood, were, as evidenced by respondents' (petitioners herein) Exhibit 23 in the proceedings before the Board, in substance and for the most part an agreement not to unionize petitioners and not to interfere or have any voice in their "*choice of method and personnel*" policies.

6. The Board admits each and every allegation contained in paragraphs "21" and "22" of the petition to review, except that it denies that the Employees Representation plan was maintained "in good faith" or that the contracts with the Brotherhood were entered into in good faith; and further answering, avers that following petitioners' recognition of the Brotherhood, officers of the various locals thereof, department heads and foremen were permitted to devote full or part time, as required, to campaign for membership therein among, and collect dues from, petitioners' employees during working hours and on petitioners' time, drawing their regular salaries from petitioners nevertheless; that this practice continued up until a short time before petitioners entered into formal contracts with the Brotherhood; that notwithstanding petitioners' lack of definite information as to the number of their employees that were members of the Brotherhood petitioners nevertheless executed the aforementioned contracts with the Brotherhood; that it was not until June 29, 1937, after the contracts were executed and the presentation of the Board's case in the proceedings had before it had been completed, that petitioners received a statement from the Brotherhood of its membership totals; that notwithstanding that this membership statement showed that one of the locals—Local B-829—did not represent a majority of the 13,200 employees eligible for membership therein, petitioners nevertheless continued to treat the contract with said Local B-829, as they did all of their contracts with the Brotherhood, an exclusive collective bargaining agreement in that petition-

ers would enter into no collective bargaining agreements with any other labor organization during the life of said contracts; that under all of the facts and circumstances petitioners did and intended to impose the Brotherhood upon their employees to the exclusion of the United Electrical and Radio Workers of America or any other labor organization; and that under all of the facts and circumstances of this case petitioners' contracts with the Brotherhood were invalid and contrary to law.

7. The Board denies each and every allegation contained in paragraph "23" of the petition to review, except that it admits the enactment of the New York State Labor Relations Act and the creation of the New York State Labor Relations Board thereunder; and, further answering, respectfully refers the Court to paragraph (1) herein of the Board's request for enforcement of its order for a brief statement of the applicability of the National Labor Relations Act to petitioner's operations and the employees herein involved.

8. The Board denies each and every allegation contained in paragraph "24" of the petition to review, except that it admits that on or about May 5, 1937, the United Electrical and Radio Workers of America, a labor organization, filed with the Board's Regional Director in New York City, in accordance with the provisions of Section 10 (b) of the National Labor Relations Act, a charge that petitioners had engaged and were engaging in certain unfair labor practices affecting commerce; and for a full, complete, and accurate description of the contents of said charge the Board prays reference to the original thereof certified to and filed with this Court herein.

9. The Board denies each and every allegation contained in paragraph "25" of the petition to review, except that it admits that on or about May 12, 1937, it issued, through its Regional Director in New York City, its complaint alleging that petitioners had engaged and were engaging in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), of the National Labor Relations Act, all in accordance with the provisions of Section 10 (b) of said Act, and for a full, complete, and accurate description of the provisions of said complaint the Board prays reference to the original thereof

certified to and filed with this Court herein. Said complaint and the notice of hearing accompanying it were served upon petitioners, the Brotherhood, and the United labor organization.

10. The Board denies each and every allegation contained in paragraph "26" of the petition to review, except that it admits that on or about May 17, 1937, petitioners filed in the proceeding then pending upon the complaint issued by the Board (known upon the records of the Board as Case No. C-245), a certain motion to dismiss said complaint and for a full, complete, and accurate description of the provisions of said motion to dismiss and the affidavit in support thereof, the Board prays reference to the original thereof certified to and filed with this Court herein.

11. The Board denies each and every allegation contained in paragraph "27" of the petition to review except that it admits that on or about June 14, 1937, in the course of the hearing then in progress upon the complaint issued by the Board, petitioners filed their verified answer to said complaint, which said answer, among other things, contains the matter quoted in paragraph "27" of the petition to review, and except that it admits that during the course of the said hearing petitioners made certain objections to the jurisdiction of the Board therein. For a full, complete, and accurate description of said answer and the said objections to the jurisdiction made in the course of the hearing by petitioners, the Board prays reference to the original of said answer and to the transcript of said hearing certified to and filed with this Court herein.

12. For lack of knowledge, the Board denies each and every allegation contained in paragraphs "28," "29," and "30" of the petition to review except that it admits that in the course of the hearing upon the complaint issued by the Board, petitioners offered in evidence as their (Respondents') Exhibits Nos. 1 and 2 the decree and certain related pleadings and proceedings in an action theretofore pending in the United States District Court for the Southern District of New York entitled Consolidated Edison Company of New York, Inc., et al. v. Lamar Hardy et al., and for a full, complete, and accurate description thereof the Board prays reference to said Exhibits Nos. 1 and 2 certified to and filed with this Court herein.

13. The Board admits each and every allegation contained in paragraph "31" of the petition to review; and further answering, avers that at no time did petitioners ever seek a hearing before the Board on any phase of the case other than the question of jurisdiction, and that at no time after the proceeding had been transferred to and continued before the Board in accordance with Article II, Section 37, of the Board's Rules and Regulations, Series 1—as amended, did petitioners seek a hearing before the Board on any phase of the case.

14. The Board denies each and every allegation contained in paragraphs "32," "33," and "34" of the petition to review, except that it admits that in the course of the hearing upon the complaint issued by the Board, the Trial Examiner designated by the Board granted certain motions to amend the said complaint, and for a full, accurate, and complete description of said motions and the amendments so granted and any objections thereto, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that in the course of said hearing the Trial Examiner granted a motion by petitioner to amend its answer to the said complaint, and for a full, accurate, and complete description thereof, the Board prays reference to the record certified to and filed with this Court herein.

15. The Board denies each and every allegation contained in paragraph "35" of the petition to review, except that it admits that on July 6, 1937, the last day of the hearing before him, the Trial Examiner to a certain extent granted a motion to conform the complaint to the proof, and denied a motion by petitioners to submit certain additional proof since petitioners had failed to adduce such proof when the opportunity was afforded, and for a full, complete, and accurate description thereof the Board prays reference to the record certified to and filed with this Court herein.

16. The Board denies each and every allegation contained in paragraphs "36" and "37" of the petition to review, and for a full, complete, and accurate description of the allegations of the complaint as originally issued by

the Board, of the amendments thereto, and other proceedings had in said Case No. C-245 before the Board and referred to in said paragraphs "36" and "37" of the petition the Board prays reference to the transcript of the record therein certified to and filed with this Court herein.

17. The Board denies each and every allegation contained in paragraph "38" of the petition to review; and further answering, avers that the National Labor Relations Act is valid and constitutional under the Constitution of the United States and was validly and constitutionally applied by the Board in rendering its decision, including its findings of fact, conclusions of law, and order in the proceeding to be reviewed herein.

18. The Board denies each and every allegation contained in paragraphs "39" and "40" of the petition to review, except that it admits that there was received in evidence on June 3, 1937, the first day of the hearing before the Trial Examiner, as Board's Exhibit No. 2, a certain stipulation of facts bearing upon the nature and extent of the operations of petitioners, and except that it admits that further testimony was taken and evidence received at said hearing on June 10, 11, 14, 15, 16, 17, 23, 24, and on July 6, 1937.

19. Answering paragraphs "41," "42," "44," and "45" of the petition to review, the Board denies that the allegations of said paragraphs constitute a full, accurate, and complete description of the matters and events therein referred to, and for a full, accurate, and complete description thereof prays reference to the record of said proceeding as certified to and filed with this Court herein. The Board further denies that petitioners were denied a fair and full hearing by reason of any matter or thing referred to in said paragraphs "41," "42," "44," and "45."

Further answering, the Board affirmatively avers that at no time after the proceeding was transferred to and continued before it did petitioners apply to the Board for leave to adduce additional evidence, although petitioners had full opportunity to make such application.

Further answering, the Board affirmatively alleges that if petitioners have been aggrieved by any refusal of the Board or its Trial Examiner to permit petitioners to present testimony or evidence in the proceeding before the

Board, the statute affords petitioners now, before final hearing, the remedy therefor by application to this Court for leave to adduce additional evidence, under the following express provisions of Section 10 (e) of the National Labor Relations Act:

If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript.

20. The Board denies each and every allegation contained in paragraph "43" of the petition to review, except that it admits that on July 6, 1937, the last day of the hearing before the Trial Examiner, the Trial Examiner granted a motion by petitioners to amend their answer so as to plead an additional affirmative defense based upon the execution of certain contracts between petitioners and the Brotherhood and certain of its local unions, and for a full, complete, and accurate description of said amendment the Board prays reference to the record of said proceeding certified to and filed with this Court herein.

21. The Board denies each and every allegation contained in paragraphs "46," "47," "48," "49," "50," and "51" of the petition to review, except that, as to the allegations of paragraph "50," it admits that on or about September 29, 1937, in full compliance with the provisions of Article II, Section 37, of its Rules and Regulations, Series 1—as amended, it issued an order transferring the said proceeding to and continuing it before the Board, and for a full, complete, and accurate description of said order the Board prays reference to the record in said proceeding certified to and filed with this Court.

The Board further avers that at no time after the proceeding was transferred to and continued before the Board did petitioners make any application to it for a further hearing or for oral argument on any aspect of the proceeding, although petitioners had full opportunity and were free to make any such application.

The Board further avers that on or about July 15, 1937, petitioners submitted a full brief to it and that the said brief was duly considered in reaching its conclusions upon the matters set forth therein.

The Board further avers that the allegations contained in said paragraphs "46," "47," "48," "49," "50," and "51" are, for the most part, arguments and conclusions of law not appropriate to a petition for review of an order of the Board and do not require further answer herein.

22. The Board admits each and every allegation contained in paragraph "52" of the petition to review.

23. The Board denies each and every allegation contained in paragraphs "53" and "54" of the petition to review, except that it admits that petitioners (respondents below) introduced in evidence at the hearing as their Exhibits Nos. 17-22 certain contracts entered into in May and June, 1937, between petitioners and the Brotherhood and certain of its local unions, and except that it admits that petitioners introduced in evidence at the hearing as their Exhibit No. 16 a statement supplied to petitioners by the Brotherhood concerning the purported membership of petitioners' employees in certain Locals of the Brotherhood as of June 29, 1937, subsequent to an amendment to its answer granted at the hearing. For a full, complete, and accurate recital of the provisions of said amendment and of said contracts and statement the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that the said contracts were entered into under facts and circumstances and pursuant to conduct of petitioners violating the prohibitions of the National Labor Relations Act, all as more fully set forth in paragraphs 3, 4, and 6 hereof and as described in the decision of the Board certified to and filed with this Court, to which reference is hereby made, and that the said contracts are totally invalid and contrary to law.

24. The Board denies each and every allegation contained in paragraphs "55," "56," "57," and "58" of the petition to review, except that it admits that the proceeding before the Board was not a proceeding under Section 9 of the National Labor Relations Act for the investigation and certification of representatives of petitioners' employees for the purposes of collective bargaining, and except that it admits

that during the period from May 28 to June 15, 1937, petitioners executed with the Brotherhood the contracts introduced in evidence as petitioners' Exhibits Nos. 17 to 22, inclusive, and that the said contracts were the subject of prior discussion between Carlisle and Tracy.

Further answering, the Board avers that the said contracts are, for the reasons hereinbefore set forth, invalid and contrary to law.

25. The Board admits each and every allegation of paragraph "59" of the petition to review, but for a full, complete, and accurate recital of the provisions of the contracts therein referred to prays reference to the originals thereof included in the record certified to and filed with this Court herein.

Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts, for reasons hereinbefore set forth, are invalid and contrary to law.

26. The Board denies each and every allegation contained in paragraphs "60" and "61" of the petition except that it admits that each of the contracts introduced in evidence as petitioners' Exhibits Nos. 17-22, inclusive, contain, in part, the provisions set forth in said paragraph "61" of the petition.

Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts, for reasons hereinbefore set forth, are invalid and contrary to law.

27. The Board denies each and every allegation contained in paragraph "62" of the petition to review, except that for want of knowledge it denies that the arbitration proceedings therein referred to were announced or conducted, and except that it admits that on November 10, 1937, the Board issued its decision, findings of fact, conclusions of law, and order now under review herein, and except that it admits that each of the said contracts therein referred to contains provisions similar to those set forth in quotations in said paragraph "62" of the petition, but for a full, complete, and accurate recital of the provisions of said contracts the Board prays

reference to the originals thereof included in the record herein.

• Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts, for reasons hereinbefore set forth, are invalid and contrary to law.

28. The Board denies each and every allegation contained in paragraph "63" of the petition to review, except that for want of knowledge it denies that petitioner defended the constitutionality of the Social Security Act in the action therein referred to, and except that it admits that the contracts therein referred to contain certain provisions similar to those set forth in quotations in said paragraph "63."

Further answering, the Board avers that whether or not the petitioners have ever defended the constitutionality of the Social Security Act is, and the various provisions of the contracts therein referred to are, irrelevant and immaterial to the issues before this Court, and that, for reasons hereinbefore set forth, the said contracts are invalid and contrary to law.

29. For want of knowledge the Board denies each and every allegation contained in paragraphs "64" and "65" of the petition to review. Further answering, the Board avers that the allegations contained in said paragraphs are irrelevant and immaterial to the issues before this Court and that the contracts and amendments thereto in said paragraphs "64" and "65" referred to are, for the reasons hereinbefore set forth, invalid and contrary to law.

30. The Board denies each and every allegation contained in paragraph "66" of the petition to review.

31. The Board admits each and every allegation contained in paragraphs "67" and "68" of the petition to review, but for a full, complete, and accurate recital of the terms of its decision, findings of fact, conclusions of law, and order issued in the proceeding now under review herein prays reference to the original thereof as contained in the record certified to and filed with this Court herein.

• 32. The Board denies each and every allegation contained in paragraph "69" of the petition to review, including subparagraphs (a) to (ee) thereof, inclusive.

Wherefore, having duly answered each and every allegation contained in the petition to review, the Board prays the Court that the said petition be denied in so far as it prays that the Board's order be reversed and set aside and that no further proceedings be taken therein and also in so far as it prays that a restraining order be directed to the Board ordering a stay of all proceedings pending determination of the proceedings before this Court.

33. Further answering, the Board, pursuant to the authority conferred upon it by the provisions of the National Labor Relations Act respectfully requests the Court for the enforcement of the order issued by the Board in the proceeding instituted against petitioners, said proceeding being known upon the records of the Board as Case No. C-245, the title thereof being "In the Matter of Consolidated Edison Company of New York, Inc., and affiliated Companies, Brooklyn Edison Co. of New York, Inc., New York and Queens Electric Light and Power Co., Westchester Lighting Co., The Yonkers Electric Light & Power Co., New York Steam Corp., Consolidated Telegraph and Electrical Subway Company and United Electrical & Radio Workers of America, C. I. O. Local No. 1212."

In support of its request for the enforcement of said order the Board alleges:

(1)

Petitioners, Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are, and at all times herein mentioned were, operating public utilities corporations organized and existing under the laws of the State of New York with their principal offices and places of business in the City of New York, and they are now and at all times hereinafter mentioned were engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. The petitioner, Consolidated Edison Company of New York, Inc., is engaged also in the business of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to

its manufacture of gas. Said petitioner, Consolidated Edison Company of New York, Inc., in addition to being an operating utility company, as aforesaid, is also a holding company owning controlling stock interests in the other petitioner companies herein, to wit: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electric Subway Company.

The petitioner, Westchester Lighting Company, is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the City of Yonkers.

The petitioner, The Yonkers Electric Light and Power Company, is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying electricity to consumers situated in the City of Yonkers, Westchester County, New York.

The petitioner, New York Steam Corporation, is and at all times hereinafter mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in the City of New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan.

The petitioner, Consolidated Telegraph and Electrical Subway Company, is a corporation organized and existing under the laws of the State of New York, and is now and at all times hereinafter mentioned was engaged in the business of constructing, equipping, maintaining, and operating under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors in the Boroughs of Manhattan and The Bronx.

Petitioners have for a long period of years been under a unified ownership, management, and operation, and the manufacturing plants, holder-stations, transfer and distribution lines and all other properties of said petitioners have been and are operated as a unified and interconnected system.

In the course and conduct of their business petitioners cause and have continuously caused the major portion of the raw materials, supplies, and equipment used in the production of all their electric energy, gas and steam to be purchased and transported in interstate commerce from and through states of the United States other than the State of New York to their plants and places of business in the State of New York and cause and have continuously caused the electrical energy, gas, and steam produced by them to be sold and supplied to various important businesses engaged in interstate and foreign commerce and vitally dependent upon the use of said electrical energy, gas and steam, including interstate railroads and ferries, telegraph, telephone, newspaper, and radio companies, the New York Stock Exchange, the United States Post Office, and the federal government and the City of New York in connection with navigation in the New York harbor; all of the aforesaid having a close, intimate, and substantial relationship to trade, traffic, communication, transportation, and commerce among the several states and with foreign countries, and to the operations of instrumentalities engaged therein, and being an integral part of the flow of trade, traffic, communication, transportation, and commerce among the several states and with foreign countries and of the operations of the instrumentalities engaged therein.

(2)

By reason of the provisions of Section 10 (f) of the National Labor Relations Act, this Court has jurisdiction of the petition herein and of this request for enforcement.

(3)

On the 12th day of May 1937, a charge theretofore having been filed with the Board by the United Electrical and Radio Workers of America, a labor organization (hereinafter called the United), the Board, by its Regional Director for the Second Region, duly issued its complaint in said

proceeding No. C-245, alleging that petitioners had engaged in and were engaging in certain unfair labor practices affecting commerce in violation of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, which complaint, together with a notice of hearing thereon, was duly served upon petitioners, the Brotherhood and the United. Thereafter, on May 17, 1937, petitioners, appearing specially, filed a motion to dismiss the complaint for want of jurisdiction together with a request that the motion be heard and determined by the Board prior to hearing on the complaint. Petitioners' request for a prior and separate hearing on the motion to dismiss the complaint was thereafter denied by the Board. Thereafter, on or about May 25, 1937, the Regional Director issued and duly served an amended notice of hearing upon petitioners, the Brotherhood, and the United. On June 14, 1937, petitioners filed an answer to the complaint reserving their objections to the jurisdiction of the Board.

(4)

On June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, the Board, by a Trial Examiner, pursuant to due notice held a hearing in said proceeding at New York City. At the hearing petitioners reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on their motion to dismiss the complaint. Petitions to intervene, filed prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, were denied by the Trial Examiner after argument thereon. At said hearing testimony and other evidence with respect to the allegations stated in said complaint were adduced by the Board and by petitioners. On motion by counsel for the Board the complaint was amended without objection to include the name of Stephen L. Solosy in the allegations contained in paragraphs 19, 20, and 21 thereof. On further motion by counsel for the Board, and over petitioners' objections, the complaint was further amended so as to include within paragraphs 23 and 24 references to paragraph 22 thereof, and the said complaint was thereafter further amended to conform to the proof except insofar as the evidence related to the dis-

criminary discharge of one Philemon Ewing who was not named in the complaint. On motion by counsel for petitioners the answer was amended to include as a separate defense allegations that certain contracts executed by petitioners with certain local unions of the Brotherhood had rendered moot any controversy raised by the complaint. At the close of the presentation of the Board's case, petitioners' motion to dismiss the complaint for lack of jurisdiction was renewed and denied.

(5)

On June 24, 1937; upon the completion of the Board's case, petitioners' counsel requested an adjournment to secure the testimony of Floyd L. Carlisle and Harold Dean, asserted to be indispensable witnesses. The sole reason offered by petitioners' counsel for not calling other witnesses at this time was that the Board had completed the presentation of its case sooner than was anticipated by petitioners. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only and reserved until that time decision as to whether the testimony of Dean and other witnesses would be taken when the hearing resumed, with permission to petitioners in the meantime to present the matter of taking the testimony of witnesses other than Carlisle directly to the Board. In answer to a request therefor the Board on July 2, 1937, advised petitioners that it would permit both Carlisle and Dean to testify at the adjourned hearing on July 6, 1937, but would not permit petitioners to adduce testimony from any other witnesses at that adjourned hearing on the ground that such other witnesses should have been produced on June 24, 1937, at the close of the Board's case.

(6)

Thereafter, on September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37, of the National Labor Relations Board Rules and Regulations, Series 1, as amended.

(7)

Thereafter, on the 10th day of November 1937, the Board, having duly considered the matter, including the record made in the proceeding conducted by the Trial Examiner,

the stenographic report of the hearing and the evidence, both oral and documentary, and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that petitioners had been and then were engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, duly stated its findings of fact and conclusions of law and entered the following order directed to petitioners as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during work-

ing hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his dis-

charge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist International Brotherhood of Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

(8)

Said order was duly served upon petitioners, the Brotherhood, and the United, and is and has been at all times since its issuance in full force and effect.

Wherefore the Board prays this Court, pursuant to Section 10 (f) of the National Labor Relations Act, to take jurisdiction of this proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order of the Board, dated November 10, 1937, a decree enforcing in whole the said order of the

Board and requiring petitioners, their officers, agents, successors, and assigns to comply herewith.

Dated at Washington, D. C., this 3rd day of December 1937.

J. Warren Madden, Chairman; Edwin S. Smith, Member; Donald Wakefield Smith, Member, National Labor Relations Board. Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel, National Labor Relations Board.

Duly sworn to by J. Warren Madden et al. Jurat omitted in printing.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT, OCTOBER TERM, 1937

No. —

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS et al.,
Petitioners,

vs.

THE NATIONAL LABOR RELATIONS BOARD, Respondent

On Petition to Review an Order of the National Labor
Relations Board

ANSWER OF THE NATIONAL LABOR RELATIONS BOARD TO PETI-
TION FOR REVIEW, AND REQUEST FOR THE ENFORCEMENT OF
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—Filed
December 6, 1937

To the Honorable, the Judges of the United States Circuit
Court of Appeals for the Second Circuit:

Comes now the National Labor Relations Board (herein-
after called the Board) by J. Warren Madden as Chairman
and Member of said Board, and Edwin S. Smith and Donald
Wakefield Smith, as Members thereof, and, pursuant to the
National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S.
C. A., sec. 151 et seq.), files this answer and request for the
enforcement of an order of the Board. In filing this answer

and request for enforcement, the Board feels obliged to call the Court's attention to the unduly prolix and argumentative character of the so-called petition for review. It does not conform to the requirements of a pleading, and to the proper practice under the National Labor Relations Act. It is in reality in the nature of a lengthy brief, accompanied by reprints of portions of the record, upon points petitioners will make when the case is subsequently heard before this Court. As a consequence, the Board has found it necessary in answering numerous paragraphs of the petition to refer the Court generally to the actual record of the proceeding before the Board, since any attempt to answer fully the argumentative and incomplete allegations of those paragraphs would require the reproduction in this answer of a considerable part of the entire record before the Board.

1. The Board admits each and every allegation contained in paragraphs "First," "Second," and "Third" of the petition to review.

2. The Board denies each and every allegation contained in paragraph "Fourth" of the petition to review, except that it admits the execution of the contracts therein referred to and for the contents thereof prays reference to copies of the said contracts, being part of the record certified to and filed with this Court herein.

Further answering, the Board avers that said contracts are wholly invalid and contrary to law in that they were not entered into in good faith by the companies aforesaid, composing the consolidated system parties thereto and respondents to the order issued by the Board, but followed upon a course of action on the part of said companies intended to and which in fact did intimidate and coerce their employees into joining the petitioner International Brotherhood of Electrical Workers (hereafter called the Brotherhood) or one or more of its affiliated petitioner unions, and more particularly that said companies immediately following their withdrawal of financial support from certain Employee Representation Plans announced their recognition of the Brotherhood and expressed their preference that their employees join said Brotherhood, despite the fact that at that time they were aware of the meagre membership of their employees in the Brotherhood, despite the fact that at that time they knew that the

members of Local B-752 of the Brotherhood had transferred their allegiance to^a and had become members of Local 1212 of the United Electrical and Radio Workers of America, despite the opinion expressed by certain representatives of their employees that the sudden recognition of the Brotherhood was a means of coercing them into joining that union, and despite the request on behalf of their employees for a withholding of recognition of the Brotherhood until the employees had an opportunity to discuss the matter. Nevertheless said companies continued in their expressed purpose and, following recognition of the Brotherhood, permitted officers of the various locals thereof, department heads, and foremen to devote full or part time, as required, to campaign for membership therein among and collect dues from said employees during working hours and on the companies' time, drawing their regular salaries from the companies nevertheless. This practice continued up until a short time before the companies entered into the formal contracts with petitioners, and notwithstanding the companies' lack of definite information as to the number of their employees that were members of the petitioner unions, the companies nevertheless executed the aforementioned contracts. It was not until June 29, 1937, after the contracts were executed and the presentation of the Board's case in the proceedings before it had been completed, that the companies received a statement from the Brotherhood of its membership totals, but notwithstanding that this membership statement showed that one of the locals—Local B-829—did not represent a majority of the 13,200 employees eligible for membership therein, the companies nevertheless continued to treat the contract with said Local B-829, as they did all of their contracts with petitioners, as an exclusive collective bargaining agreement in that they would not enter into collective bargaining agreements with any other labor organization during the life of said contracts. Under all of the facts and circumstances the Board was justified in concluding that the companies did and intended to impose the Brotherhood upon their employees to the exclusion of the United Electrical and Radio Workers of America or any other labor organization, and that under all of the facts and circumstances of this case the said contracts were invalid and contrary to law.

3. The Board denies each and every allegation contained in paragraph "Fifth" of the petition to review except that it admits that on June 29, 1937, petitioners presented a membership memorandum to the companies, the same being "Respondent's Exhibit No. 16" of the record certified to and filed with this Court herein.

Further answering, the Board avers that the various provisions of the said contracts are irrelevant and immaterial to the issues before this Court and that the said contracts for the reasons hereinabove set forth are invalid and contrary to law.

4. The Board denies each and every allegation contained in paragraph "Sixth" of the petition to review, except that it admits that on or about May 12, 1937, it issued, through its Regional Director in New York City, its complaint and notice of hearing alleging that the companies aforesaid had engaged and were engaging in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, all in accordance with the provisions of Section 10 (b) of the Act, and for a full, complete, and accurate description of the contents of said complaint and notice of hearing and amended notice of hearing the Board prays reference to the originals thereof certified to and filed with this Court herein. The said complaint and notices of hearing were served upon said companies, the Brotherhood, and the said United labor organization.

5. The Board denies each and every allegation contained in paragraphs "Seventh," "Eighth," and "Ninth" of the petition to review except that it admits that in the course of the hearing upon the complaint issued by the Board, the Trial Examiner designated by the Board granted certain motions to amend the said complaint, and for a full, accurate, and complete description of said motions and the amendments so granted and any objections thereto, and other proceedings had before the Board and referred to in the aforementioned paragraphs of the petition to review, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that in the course of said hearing the Trial Examiner granted a motion by the companies to amend their answer to the said complaint,

and for a full, accurate, and complete description thereof, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that petitioners were not necessary parties to the proceeding before it, that nevertheless petitioner International Brotherhood of Electrical Workers, of which the other petitioners herein are locals, was served with the complaint and notices of hearing in the proceeding before the Board, that petitioners had actual notice of the proceedings, that their counsel or other representatives attended the hearings therein, and that therefore petitioners were in nowise injured. Any injury of which petitioners complain was due to their failure to take advantage of Section 10 (b) of the National Labor Relations Act and Article II, Section 19 of the Board's Rules and Regulations—Series 1, as amended, by intervening in the proceedings before the Board. Said Section 10 (b) provides as follows:

In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony.

Further answering, the Board avers that if petitioners have been aggrieved by reason of the matters alleged in paragraph "Seventh," "Eighth," or "Ninth" of the petition to review, petitioners have an adequate and complete remedy therefor by application to this Court for leave to adduce additional evidence, under the following express provisions of Section 10 (e) of the National Labor Relations Act:

If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript.

6. The Board denies each and every allegation contained in paragraph "Tenth" of the petition to review, except that it admits that the Board issued its order in said Case

No. C-245 before it, and for a full, complete, and accurate description of the terms of said order the Board prays reference to a copy of the original thereof certified to and filed with this Court herein.

7. The Board denies each and every allegation contained in paragraph "Eleventh" of the petition to review except that it admits that the proceeding had before the Board was not a proceeding under Section 9 of the National Labor Relations Act for the investigation and certification of representatives of the companies' employees, for the purposes of collective bargaining. For a full, accurate, and complete description of the contents of the complaint and the amendments duly allowed thereto, the Board prays reference to the record certified to and filed with this Court herein.

Further answering, the Board avers that the said contracts are, for the reasons hereinbefore set forth, invalid and contrary to law.

8. The Board denies each and every allegation contained in paragraph "Twelfth" of the petition to review, except that it admits that during the course of the proceeding had before the Board the companies made certain motions and objections to the jurisdiction of the Board therein, for a full, complete, and accurate description of which the Board prays reference to the record filed with this Court herein, and except that it further admits that in the course of the hearing had before the Board the said companies offered in evidence as their (Respondents') Exhibits Nos. 1 and 2 the decree and certain related pleadings and proceedings in an action theretofore pending in the United States District Court for the Southern District of New York entitled Consolidated Edison Company of New York, Inc., et al. v. Lamar Hardy et al., and for a full, complete, and accurate description thereof the Board prays reference to said Exhibits Nos. 1 and 2 certified to and filed with this Court herein.

9. The Board denies each and every allegation contained in paragraph "Thirteenth" of the petition to review, and, further answering, avers that the said contracts are, for the reasons hereinbefore set forth, invalid and contrary to law.

10. The Board denies each and every allegation contained in paragraphs "Fourteenth," "Fifteenth," and "Six-

teenth" including sub-paragraphs "A" to "F" inclusive thereof, of the petition to review, except that it admits that the proceeding had before the Board was not a proceeding under Section 9 of the National Labor Relations Act for the investigation and certification of representatives of the companies' employees for purposes of collective bargaining; and further answering alleges that the National Labor Relations Act is valid and constitutional and was validly and constitutionally applied by the Board in rendering its decision, including its findings of fact, conclusions of law, and order in the proceeding to be reviewed herein.

Answering further, the Board avers that the allegations contained in said paragraphs are, for the most part, arguments and conclusions of law not appropriate to a petition for review of an order of the Board and do not require further answer herein.

11. The Board denies each and every allegation contained in paragraph "Seventeenth" of the petition to review.

Wherefore, having duly answered each and every allegation contained in the petition to review, the Board prays the Court that the said petition be denied in so far as it prays that the Board's order be reversed and set aside and that no further proceedings be taken therein and also in so far as it prays that a restraining order be directed to the Board ordering a stay of all proceedings pending determination of the proceedings before this Court.

12. Further answering, the Board, pursuant to the authority conferred upon it by the provisions of the National Labor Relations Act respectfully requests the Court for the enforcement of the order issued by the Board in the proceeding instituted against the companies comprising the said Consolidated Edison Company System, said proceeding being known upon the records of the Board as Case No. C-245, the title thereof being "In the Matter of Consolidated Edison Company of New York, Inc., and affiliated Companies, Brooklyn Edison Co. of New York, Inc., New York and Queens Electric Light and Power Co., Westchester Lighting Co., The Yonkers Electric Light & Power Co., New York Steam Corp., Consolidated Telegraph and Electrical Subway Company and United Electrical & Radio Workers of America, C. I. O. Local No. 1212."

In support of its request for the enforcement of said order the Board alleges:

(1)

The Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., and New York and Queens Electric Light and Power Company are, and at all times herein mentioned were, operating public utilities corporations organized and existing under the laws of the State of New York with their principal offices and places of business in the City of New York, and they are now, and at all times hereinafter mentioned were, engaged in the business of supplying electric energy to consumers situated within the Boroughs of Manhattan, The Bronx, and Brooklyn, and a part of the Borough of Queens, within the City of New York. The said Consolidated Edison Company of New York, Inc., is engaged also in the business of supplying gas to consumers situated in the Boroughs of Manhattan and The Bronx, and a part of the Borough of Queens, and in selling to manufacturers and jobbers in New York City for commercial purposes certain by-products incidental to its manufacture of gas. Said Consolidated Edison Company of New York, Inc., in addition to being an operating utility company, as aforesaid, is also a holding company owning controlling stock interests in the other said companies herein, to wit: Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, and Consolidated Telegraph and Electric Subway Company.

The Westchester Lighting Company is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying electricity and gas to consumers situated in Westchester County, New York, except the City of Yonkers.

The Yonkers Electric Light and Power Company is and at all times herein mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in Mount Vernon, New York, and is now and at all times hereinafter mentioned was engaged in the business

of supplying electricity to consumers situated in the City of Yonkers, Westchester County, New York.

The New York Steam Corporation is and at all times hereinafter mentioned was an operating public utility corporation organized and existing under the laws of the State of New York with its principal office and place of business in the City of New York, and is now and at all times hereinafter mentioned was engaged in the business of supplying steam to consumers situated within a part of the Borough of Manhattan.

The Consolidated Telegraph and Electrical Subway Company is a corporation organized and existing under the laws of the State of New York, and is now and at all times hereinafter mentioned was engaged in the business of constructing, equipping, maintaining, and operating, under contracts with the City of New York, underground ducts or conduits for the reception of electrical conductors in the Boroughs of Manhattan and The Bronx.

All of the companies aforesaid have for a long period of years been under a unified ownership, management, and operation, and the manufacturing plants, holder-stations, pumping stations, transfer and distribution lines, and all other properties of said companies have been and are operated as a unified and interconnected system.

In the course and conduct of their business the said companies cause and have continuously caused the major portion of the raw materials, supplies, and equipment used in the production of all their electrical energy, gas and steam to be purchased and transported in interstate commerce from and through states of the United States other than the State of New York to their plants and places of business in the State of New York and cause and have continuously caused the electrical energy, gas, and steam produced by them to be sold and supplied to various important businesses engaged in interstate and foreign commerce and vitally dependent upon the use of said electrical energy, gas and steam, including interstate railroads and ferries, telegraph, telephone, newspaper, and radio companies, the New York Stock Exchange, the United States Post Office, and the federal government and the City of New York in connection with navigation in the New York harbor: all of the aforesaid having a close, intimate, and substantial relationship to trade, traffic, communication, transportation, and commerce among the several states and with foreign countries, and to

the operations of instrumentalities engaged therein, and being an integral part of the flow of trade, traffic, communication, transportation, and commerce among the several states and with foreign countries and of the operations of the instrumentalities engaged therein.

(2)

By reason of the provisions of Section 10 (f) of the National Labor Relations Act, this Court has jurisdiction of the petition herein and of this request for enforcement.

(3)

On the 12th day of May 1937 a charge theretofore having been filed with the Board by the United Electrical and Radio Workers of America, a labor organization, the Board, by its Regional Director for the Second Region, duly issued its complaint in said proceeding No. C-245, alleging that the companies aforesaid (respondents before the Board) had engaged in and were engaging in certain unfair labor practices affecting commerce in violation of Section 8, subdivisions (1), (2), and (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, which complaint, together with a notice of hearing thereon, was duly served upon said companies, the International Brotherhood of Electrical Workers, and the said United Electrical and Radio Workers of America. Thereafter, on May 17, 1937, the companies aforesaid respondents to said complaint, appearing specially, filed a motion to dismiss the complaint for want of jurisdiction together with a request that the motion be heard and determined by the Board prior to hearing on the complaint. This request for a prior and separate hearing on the motion to dismiss the complaint was thereafter denied by the Board. Thereafter, on or about May 25, 1937, the Regional Director issued and duly served an amended notice of hearing upon the companies the Brotherhood, and the United. On June 14, 1937, the companies filed an answer to the complaint reserving their objections to the jurisdiction of the Board. The International Brotherhood of Electrical Workers entered no formal appearance at the hearing but was fully advised of the proceedings and its counsel or other representatives attended upon them.

(4)

On June 3, 10, 11, 14, 15, 16, 17, 23, 24, and July 6, 1937, the Board by a Trial Examiner, pursuant to due notice, held a hearing in said proceeding at New York City. At the hearing the respondent companies reserved their objections to the jurisdiction of the Board and noted an exception to the order of the Board denying a prior and separate hearing on their motion to dismiss the complaint. Petitions to intervene filed prior to the hearing by The Independent Gas and Electric Workers Union of Westchester County and by Independent Gas and Electric Union, were denied by the Trial Examiner after argument thereon. At said hearing testimony and other evidence with respect to the allegations stated in said complaint were adduced by the Board and by said respondent companies. On motion by counsel for the Board the complaint was amended without objection to include the name of Stephen L. Solosy in the allegations contained in paragraphs 19, 20, and 21 thereof. On further motion by counsel for the Board, and over respondent companies' objections, the complaint was further amended so as include within paragraphs 23 and 24 references to paragraph 22 thereof, and the said complaint was thereafter further amended to conform to the proof except insofar as the evidence related to the discriminatory discharge of one Philemon Ewing who was not named in the complaint. On motion by counsel for respondent companies the answer was amended to include as a separate defense allegations that certain contracts executed by said respondents with certain local unions of the International Brotherhood of Electrical Workers as of June 15, 1937, had rendered moot any controversy raised by the complaint. At the close of the presentation of the Board's case, respondent companies' motion to dismiss the complaint for lack of jurisdiction was renewed and denied.

(5)

On June 24, 1937, upon the completion of the Board's case, counsel for the respondent companies requested an adjournment to secure the testimony of Floyd L. Carlisle and Harold Dean asserted to be indispensable witnesses. The sole reason offered by said counsel for not calling other witnesses at this time was that the Board had completed the presentation of its case sooner than was anticipated by re-

spondents. The Trial Examiner granted an adjournment until July 6, 1937, for the purpose of receiving the testimony of Carlisle only and reserved until that time decision as to whether the testimony of Dean and other witnesses would be taken when the hearing resumed, with permission to said respondents in the meantime to present the matter of taking testimony of witnesses other than Carlisle directly to the Board. In answer to a request therefor, the Board on July 2, 1937, advised said respondents that it would permit both Carlisle and Dean to testify at the adjourned hearing on July 6, 1937, but would not permit said respondents to adduce testimony from any other witnesses at that adjourned hearing on the ground that such other witnesses should have been produced on June 24, 1937, at the close of the Board's case.

(6)

Thereafter, on September 29, 1937, the proceeding was transferred to and continued before the Board in accordance with Article II, Section 37, of the National Labor Relations Board Rules and Regulations—Series 1, as amended.

(7)

Thereafter, on the 10th day of November 1937 the Board, having duly considered the matter, including the record made in the proceeding conducted by the Trial Examiner, the stenographic report of the hearing and the evidence, both oral and documentary, and being sufficiently advised in the premises and being of the opinion upon all the testimony and evidence that said respondent companies had been and then were engaged in certain unfair labor practices affecting commerce, within the meaning of the National Labor Relations Act, duly stated its findings of fact and conclusions of law and entered the following order directed to said respondent companies as follows:

Order

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondents, Consolidated Edison Company of New York, Inc., and its affiliated companies: Brooklyn Edison Company, Inc., New York and Queens

Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, their officers, agents, successors, and assigns shall:

1. Cease and desist from:

a. Discouraging membership in United Electrical and Radio Workers of America or any other labor organization of their employees, or encouraging membership in International Brotherhood of Electrical Workers or any other labor organization of their employees, by discharging or refusing to reinstate any of their employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

b. Urging, persuading, warning, or coercing their employees to join International Brotherhood of Electrical Workers, or any other labor organization of their employees, or threatening them with discharge if they fail to join any such labor organization;

c. Permitting organizers and collectors of dues for International Brotherhood of Electrical Workers or any other labor organization to engage in activities among their employees in behalf of such labor organizations during working hours or on the respondents' property, unless similar privileges are granted to United Electrical and Radio Workers of America and all other labor organizations of their employees;

d. Permitting their employees who were officials of the Employees' Representation Plans to use the respondents' time, property, and money in behalf of International Brotherhood of Electrical Workers or any other labor organization of their employees;

e. Employing detectives to investigate the activities of their employees in behalf of United Electrical and Radio Workers of America or any other labor organization of their employees or employing any other form or manner of espionage for such purposes;

f. Giving effect to their contracts with the International Brotherhood of Electrical Workers;

g. Recognizing the International Brotherhood of Electrical Workers as the exclusive representative of their employees;

h. In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid or protection.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

a. Offer to Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler and Stephen L. Solosy immediate and full reinstatement to their former positions without prejudice to their seniority and other rights or privileges;

b. Make whole Martin A. Wersing, Julius A. Greulich, Michael A. Wagner, William J. Kennedy, John F. Emler, and Stephen L. Solosy for any loss of pay they have suffered by reason of their discharges, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

c. Post immediately notice to their employees in conspicuous places through their offices, buildings, plants, and other places of employment stating: (1) that the respondents will cease and desist in the manner aforesaid; (2) that the respondents' employees are free to join or assist any labor organization for the purposes of collective bargaining with the respondents; (3) that the respondents will bargain collectively with any labor organization entitled thereto; (4) that the respondents will not discharge, or in any manner discriminate against members of United Electrical and Radio Workers of America or any other labor organization of their employees or any person assisting such organizations by reason of such membership or assistance; (5) that the respondents will not discharge, or in any manner discriminate against any employee for refusal or failure to join or assist

International Brotherhood or Electrical Workers or any other labor organization of their employees; (6) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

d. Notify the Regional Director for the Second Region in writing within ten (10) days from the date of this Order what steps the respondents have taken to comply herewith.

3. The complaint, in so far as it alleges that the respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (2) of the Act, is hereby dismissed without prejudice.

(8)

Said order was duly served upon the companies respondent thereto, the Brotherhood, and the United, and is and has been at all times since its issuance in full force and effect.

Wherefore, the Board prays this Court, pursuant to Section 10 (f) of the National Labor Relations Act, to take jurisdiction of this proceeding and of the questions determined therein and make and enter upon the pleadings, testimony, and evidence, and the proceedings set forth in such transcript, and upon the order of the Board, dated November 10, 1937, a decree enforcing in whole the said order of the Board and requiring the respondents against whom said order is directed, their officers, agents, successors, and assigns to comply herewith.

Dated at Washington, D. C., this 3rd day of December 1937.

J. Warren Madden, Chairman; Edwin S. Smith, Member; Donald Wakefield Smith, Member, National Labor Relations Board. Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel. (Seal.)

Duly sworn to by J. Warren Madden et al. Jurat omitted in printing.

[File endorsement omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC., ET
AL., Petitioners,
against

NATIONAL LABOR RELATIONS BOARD, Respondent

REPLY BY THE PETITIONERS TO THE BOARD'S ANSWER AND
REQUEST FOR THE ENFORCEMENT OF ITS ORDER OF NOVEM-
BER 10, 1937—Filed January 8, 1938

The above-named petitioners herein file this reply to so much of the Board's answer of December 3, 1937, to the petition for review, dated and filed November 18, 1937, as requests, by cross-petition or otherwise, the enforcement of its Order of November 10, 1937, and hereby reply particularly to Paragraphs "(1)" to "(8)," both inclusive, of such answer.

In so far as the new matter set forth in the Board's answer by way of attempted explanation or defense of the Board's findings and conclusions calls for a reply, the petitioners refer to, and do hereby repeat and reallege, each and every allegation contained in the petition for review, with the same force and effect as if it were fully incorporated herein and made a part of this reply.

Further replying to the Board's request for the enforcement of its Order, as stated at pages 20 to 33 of its answer, the petitioners respectfully show, upon information and belief:

(1)

The petitioners deny the allegations set forth in Paragraph "(1)" of the Board's answer (page 24) that the matters alleged in such paragraph have a close, intimate and substantial relationship to trade, traffic, communication, transportation, and to commerce among the several States and with foreign countries, and to the operations of instrumentalities engaged therein, within the meaning

of the National Labor Relations Act, all within the scope and meaning of Section 8 of Article I of the Constitution of the United States. The petitioners further deny that the matters and things alleged in Paragraph "(1)" of the Board's answer are an integral part of the flow of trade, traffic, communication, transportation and commerce among the several States and with foreign countries and of the operations of the instrumentalities engaged therein.

Replying further to the allegations of Paragraph "(1)" of the Board's answer, the petitioners aver that the facts stipulated and agreed, by and between the Board and the petitioners, as to each of the matters alleged in general terms in Paragraph "(1)" of the Board's answer, are set out in the Stipulation of Facts for the Determination of the Question of Jurisdiction (Board's Exhibit No. 2; Transcript of Record, pages 1318 to 1388); and the petitioners refer thereto as an accurate statement of the facts as to the matters alleged, and hereby incorporate such stipulation and statement herein, and make it a part of this reply. The petitioners particularly aver that the stipulated and agreed facts as to the origins and sources of some of the raw materials used by the petitioners, exclusively within the State of New York, in the production of gas, electricity and steam, for local consumption in such State, are as broad as, or are sufficient to sustain, the allegations as to such matters, in Paragraph "(1)" of the Board's answer.

The petitioners further aver that the grounds on which, according to Paragraph "(1)" of the Board's answer, the Board now attempts to sustain and enforce its jurisdiction over the petitioners, are substantially different from those alleged in the complaint on which the Board asserted and exercised jurisdiction, and that the principal grounds on which jurisdiction was first asserted and exercised, are now abandoned as contrary to the stipulated facts.

(2)

The petitioners aver that the allegations contained in Paragraph "(2)" of the Board's answer state only a conclusion of law to be determined by this Court, and as such call for neither an admission nor a denial by petitioners, who are advised and believe that the Board was and is without jurisdiction in the premises.

(3)

As to Paragraph "(3)" of the Board's answer, the petitioners deny that the complaint was duly issued by the Board; deny that the complaint and notice of hearing thereon were duly served upon them; deny, for lack of knowledge, that the said complaint and notice of hearing were served, and that the amended notice for a hearing was served, upon any person other than the petitioners, as alleged in Paragraph "(3)" of the Board's answer.

(4)

The petitioners deny that the hearing held by the Trial Examiner, as set forth in Paragraph "(4)" of the Board's answer, was pursuant to due notice. The petitioners further aver that the further amendment granted at the close of the Board's case, to conform the complaint to the proof, was made without due notice to the petitioners and over their objections, and that petitioners' motion to amend their answer so as to plead an additional defense as set forth in Paragraph "(4)" of the Board's answer was made in view of the improper allowance of amendments of the Board's answer without due notice to the parties and persons interested, and was granted without objection by the Board.

(5)

The petitioners deny each and every allegation contained in Paragraph "(5)" of the Board's answer, except that they admit and further aver that the case in behalf of the Board was completed unexpectedly on June 24th, aside from a few minor matters; that recess was taken until July 6, 1937, because of the absence of Mr. Floyd L. Carlisle, who was in Europe; that decision was then reserved as to whether the testimony of Mr. Harold C. Dean (who was in Milwaukee, Wisconsin, in attendance at a meeting of the American Institute of Electrical Engineers) and of other witnesses for the petitioners, would be received on the adjourned date; that leave was granted to petitioners' counsel to present the matter to the Board by letter; and that this was done (Transcript of Record, pages 1463 to 1467). The petitioners further allege that at no time on June 24, 1937, was it directed or suggested, by or in behalf of the Board, that any testimony in behalf of the petitioners other

than that of Messrs. Carlisle and Dean would have to be presented on June 24th or on any intervening day before July 6th, the Board's testimony having been rested only on June 24th, and then unexpectedly. No date was set by the Board for any intermediate hearing before July 6th. The Board on July 2nd denied the petitioners' request to present testimony other than that of Messrs. Carlisle and Dean.

The petitioners further aver that on July 6, 1937, the case for the Board was completed and a motion was made by the Board to further amend its complaint by conforming the complaint to the evidence, and was granted, over the petitioners' objections. The petitioners renewed their motions to dismiss for want of jurisdiction and upon other grounds, and thereupon called upon Messrs. Carlisle and Dean, who testified in their behalf. Under direction of the Board, the Trial Examiner declined, on July 6th, to permit the calling of other witnesses who were present in the hearing room and ready to testify. An offer of proof on behalf of the petitioners was made and spread upon the record. Thereupon a motion for adjournment was made to enable petitioners to call other witnesses to meet the issues raised by the granting of the broad and vague motion by which the complaint had been further amended on that day. This motion was denied by the Trial Examiner on the ground that he was bound by the direction of the Board, made prior to the granting of the latest amendment of the complaint. Counsel for the petitioners duly excepted to the refusal to permit the testimony of the witnesses present to be received on material issues. The Trial Examiner for the Board also did not accept and act upon a suggestion by counsel for the petitioners (Transcript of Record, page 1312) that the testimony of the witnesses present be taken provisionally and without prejudice, so that the Board would have the testimony and might consider the same if it saw fit. The case was thus hurriedly closed by the Board, over petitioners' objections, without having received, and without having given to the petitioners a reasonable opportunity to present, vital and necessary testimony upon important issues, including testimony which was in part necessitated by the repeated amendments of the complaint during the hearings.

(6)

The petitioners admit the allegations contained in Paragraph "(6)" of the Board's answer, that the proceeding was transferred to the Board on September 29, 1937, but deny that such transfer at such time was in accordance with the requirements of fair hearing and due process of law, and further deny that the proceeding, after such transfer, was continued by and before the Board in accordance with the Board's rules and regulations. The petitioners refer to the allegations contained in Paragraphs "48" to "51" both inclusive, of the petition for review for a statement of the facts showing non-compliance by the Board with its own Rules and Regulations.

The petitioners further aver that although the hearing before the Trial Examiner of the Board had been hurried and closed, at the Board's directions, as though great haste was warranted and necessary, the Order for the transfer of the case to the Board was not made until nearly three months afterwards and that the case was not decided by the Board until more than four months after it had been so summarily expedited and closed.

The petitioners further aver that by virtue of the procedure arbitrarily adopted by the Board and alleged in Paragraph "(6)" of the Board's answer, there were no report and findings of fact by the Trial Examiner, who alone had seen the witnesses and heard their testimony, no findings of fact by anyone who had seen any of the witnesses or heard any of the testimony, and no opportunity accorded to the petitioners for a hearing, argument, or the presentation of briefs on the facts or the law, before any member of the Board or before anyone who was to make its findings, decision and Order. The petitioners aver that such procedure was wholly contrary to the requirements of fair hearing and determination according to due process of law, and so was in violation of the constitutional rights of the petitioners.

(7)

The petitioners deny, for want of knowledge, each and every allegation contained in Paragraph "(7)" of the Board's answer, except that they admit that the Order purported to be entered on November 10, 1937, contains the

provisions set forth in the Board's answer, all of which are alleged by the petitioners to be of no force or effect because the Board had no jurisdiction to make them and because the Board made them in a manner wholly contrary to law and to constitutional right.

(8)

The petitioners deny that the service of the Order of the Board dated November 10, 1937, was duly made upon them as alleged in Paragraph "(8)" of the Board's answer. The petitioners deny knowledge as to whether or not the Order, as well as prior papers, notices, complaint, and amendments of the complaint, were duly served upon anyone other than the petitioners. The petitioners further aver that the Board, in its opposition to the petitioners' application for a temporary stay of the Board's Order, alleged and contended that its Order was not and could not at any time be, in full force and effect, or of any force or effect, until after final review followed by an enforcing decree of this Court.

(9)

The petitioners, further replying to the Board's request for the enforcement of its Order, aver that the Board's cross-petition requesting the enforcement of its Order fails to allege facts sufficient to have authorized the Board to make and enter the Order under review and fails to allege facts sufficient to entitle the Board to seek enforcement of its Order in this proceeding. The petitioners particularly allege that the cross-petition of the Board fails to state facts sufficient to show that the Board ever acquired or had any lawful jurisdiction over any of the petitioners, or facts sufficient to show that the Board ever duly served and acquired jurisdiction over other necessary and indispensable parties to such a determination as the Board undertook to make and now asks this Court to enforce.

(10)

The petitioners allege that, after hurrying the hearings before the Trial Examiner and requiring him to close the case on July 6th without hearing witnesses for the petitioners who were present in the hearing-room, the Board waited nearly three months and until September 29, 1937, before

taking any further action in the case, with no report or findings by the Trial Examiner meanwhile. On the date last named, the Board ordered the case transferred to and continued before itself. On November 10, 1937, without further proceedings and more than four months after the summary closing of the hearings, the Board made its Order here under review. On November 18, 1937, the petition for review was docketed, and the Senior Circuit Judge by Order directed that the Board "forthwith certify to this Court, pursuant to Section 10(f) of the National Labor Relations Act, a transcript of the entire record in the proceedings, including therein the Trial Examiner's Report and findings upon the facts if any such Report there was, together with all exhibits and the originals of all papers filed with the said Board, from which the complaint was formulated and issued." On November 30, 1937, the certified Transcript was filed by the Board with the Clerk of this Court. On December 6, 1937, counsel for the petitioners asked this Court for the hearing of their petition for review during December and expeditiously, as required by Section 10(f) of the Act. General Counsel for the Board opposed the fixing of a December date. On December 11, 1937, General Counsel to the Board made written application to the Court for the fixing of a date during the week of January 10, 1938, for the hearing of the petition for review. Counsel for the petitioners opposed this application, and asked for a hearing in December. This Court fixed January 11, 1938. On December 29, 1937, counsel for the Board made oral application to the Senior Circuit Judge for a further postponement, which was granted to January 17, 1938.

Section 10(i) of the National Labor Relations Act requires that

"Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed."

The petitioners allege that, by reason of the facts hereinabove stated, the matters and things alleged in the complaint of May 5, 1937, and set forth in the Board's decision, findings and Order of November 10, 1937, have become and are stale and moot, and that by reason of its own wilful delay, laches, and non-compliance with the statute, the Board is not entitled to the enforcement of its Order against the petitioners.

(11)

The petitioners respectfully ask that the Board's cross-petition and request for the enforcement of its Order dated November 10, 1937, be denied, upon each and all of the grounds stated in the petition for review verified and filed by the petitioners on November 18, 1937, and upon the grounds hereinabove set out.

Wherefore, the petitioners ask that the Board's request for the enforcement of its Order of November 10, 1937, be dismissed, and that the relief prayed for in their petition for review be granted, and that the petitioners have such other and further relief as may be just and proper in the premises.

Dated, January 7, 1938.

Consolidated Edison Company of New York, Inc., Brooklyn Edison Company, Inc., New York and Queens Electric Light and Power Company, Westchester Lighting Company, The Yonkers Electric Light and Power Company, New York Steam Corporation, Consolidated Telegraph and Electrical Subway Company, by Ralph H. Tapscott, President; Consolidated Edison Company of New York, Inc., Whitman, Ransom, Coulson & Goetz, Attorneys for the Petitioners, No. 40 Wall Street, New York City. William L. Ransom, Pincus M. Berkson, Of Counsel.

Duly sworn to by Ralph H. Tapscott. Jurat omitted in printing.

[File endorsement omitted.]

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
SECOND CIRCUIT

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS; In-
ternational Brotherhood of Electrical Workers, Local
Union No. B-825, et al., Petitioners,

VS.

THE NATIONAL LABOR RELATIONS BOARD, Respondent

REPLY BY THE PETITIONERS TO THE BOARD'S REQUEST FOR THE
ENFORCEMENT OF ITS ORDER OF NOVEMBER 10, 1937—Filed
January 13, 1938

To the Honorable, the Judges of the United States Circuit
Court of Appeals for the Second Circuit:

The above named Petitioners for Reply to the Board's
Request, dated December 3, 1937, for enforcement of its
Order of November 10, 1937, adopt as and for their Reply
to said Request the verified Reply, dated January 7, 1938,
of the Consolidated Edison Company of New York, Inc.,
and its Affiliated Companies, to the Board's Request for
enforcement of the said Order, and respectfully pray that
said Reply of said Companies may be taken as the Reply,
above stated, of these Petitioners.

The Petitioners respectfully ask that the Board's Request
for the enforcement of the said Order be denied, upon
each and all of the grounds stated in the petition for re-
view verified and filed by these Petitioners on November
18, 1937, and upon the grounds set forth in the Reply of
these Petitioners above referred to.

Wherefore, these Petitioners respectfully ask that the
Board's Request for the enforcement of the said Order be
dismissed and that the relief prayed for in their petition
for review be granted, and that these Petitioners have such
other and further relief as may be just and proper in the
premises.

And as in duty, etc.

Dated, January 13, 1938.

Isaac Lobe Straus, Munsey Building, Baltimore, Md.,
Claude A. Hope and Delafield, Thorne & Marsh,
20 Exchange Place, New York, N. Y., Solicitors
for Petitioners.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC.,
ET AL., Petitioners,
against

NATIONAL LABOR RELATIONS BOARD, Respondent

PETITION FOR LEAVE TO INTERVENE

Louis B. Boudin, being duly sworn, deposes and says:

I am the attorney for United Electrical and Radio Workers of America, the labor union on whose complaint the proceeding sought to be reviewed herein was initiated by the National Labor Relations Board.

I have participated as counsel in the hearings conducted by the National Labor Relations Board, and also collaborated in the brief filed by its counsel in support of the complaint, which resulted in the order of the Board sought to be reviewed in this Court.

While the nominal parties to this proceeding are the National Labor Relations Board and the Companies who filed the petition for review, the real party in interest is not the National Labor Relations Board, which is merely a public functionary with no interest one way or the other, but the Union which I represent,—the dispute being between the Union which I represent and the Petitioners in this proceeding.

I therefore respectfully pray that my client, United Electrical and Radio Workers of America, be permitted to intervene in this proceeding, and that I be permitted to argue and file a brief on its behalf, both on the motion for a stay, as well as on the final argument of this case on the merits.

Louis B. Boudin.

Sworn to before me, this 8th day of December, 1937.
Sara M. Linsky, Notary Public, Kings County.
Kings Co. Clk. No. 67, Reg. 8877. N. Y. Co. Clk.
No. 130. Commission expires March 30, 1938.

[Endorsed:] Motion granted. Manton, U. S. J. Dec.
8/37.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND
CIRCUIT

In the Matter of

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ETC., ET
AL., Petitioners,

against

NATIONAL LABOR RELATIONS BOARD, Respondent

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.,
Petitioners

against

NATIONAL LABOR RELATIONS BOARD, Respondent

STIPULATION RE CONSOLIDATION

It is Hereby Stipulated and Agreed, by and between the undersigned that the above entitled cases be consolidated under the above title and heard as one case on the Calendar of this Court, without denial of the right of counsel for each of the respective petitioners to offer oral argument and submit briefs to the Court; and it is further

Stipulated and Agreed, that the record certified to this Court by the National Labor Relations Board, pursuant to the order of United States Circuit Judge Martin T. Manton, issued and entered the 19th day of November, 1937, in proceeding entitled "In the Matter of Consolidated Edison Company of New York, Inc., and Its Affiliated Companies, etc., Petitioners, against National Labor Relations Board, Respondent" be and the same hereby is accepted as and declared to be the only record required to be certified, printed and filed in the cases as consolidated pursuant to this stipulation and any order that may be entered hereon; and it is further

Stipulated and Agreed, that an order of consolidation providing for the printing and filing of one record herein

may be entered by the Court without notice to the undersigned.

Dated, New York, N. Y., December 7th, 1937.

Charles Fahy, General Counsel, National Labor Relations Board. Whitman, Ransom, Coulson & Goetz, Solicitors for Consolidated Edison Company of New York, Inc., et al., Petitioners. Isaac Lobe Straus and Claude A. Hope and Delafield Thorne & Marsh, Solicitors for International Brotherhood of Electrical Workers, et al., Petitioners.

So Ordered. Manton, U. S. C. J. Dec. 14/37.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—Filed December
15, 1937

A motion having been made herein by counsel for the United Electrical and Radio Workers of America for leave to intervene, and argue and file a brief on its behalf, both on the motion for a stay and on the argument on the merits;

Upon consideration thereof it is

Ordered that said motion be and hereby is granted.

Wm. Parkin, Clerk.

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE
SECOND CIRCUIT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., et al.,
Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD, Respondent

Before Manton, Swan and Augustus N. Hand, Circuit
Judges

Petitions by the Consolidated Edison Company of New York and others for review of an order of the National

Labor Relations Board. The respondent's answers pray for enforcement of said order.

Whitman, Ransom, Conlson & Goetz, for Consolidated Edison Company, et al., Petitioners; William L. Ransom, Wesley A. Sturges and Pincus M. Berkson, of Counsel.

Isaac Lobe Straus, Claude A. Hope and Delafield, Thorne & Marsh, for International Brotherhood of Electrical Workers, et al., Petitioners.

Charles Fahy, General Counsel, Robert B. Watts, Associate General Counsel, Laurence A. Knapp, Samuel Edes, and H. Gardiner Ingraham, Attorneys, for Respondent.

Louis B. Boudin, for United Electrical and Radio Workers of America, C. I. O. Intervenor.

James J. O'Brien filed a brief as Amicus Curiae.

OPINION

SWAN, Circuit Judge:

In May 1937, United Electrical and Radio Workers of America, Local 1212, a labor organization which we shall call United, filed with the National Labor Relations Board a charge that Consolidated Edison Company of New York and its affiliated companies (together referred to as petitioners) were engaging in unfair labor practices. On May 12th the Board issued its complaint against the petitioners. Appearing specially, they challenged the Board's jurisdiction, and moved that the jurisdictional question be decided prior to hearings on the merits. This request was denied. The petitioners then answered, reserving their jurisdictional objections, and hearings were had before a Trial Examiner designated by the Board. Before the Trial Examiner had made findings of fact or filed a report, the case was transferred to the Board. On November 10, 1937, the Board issued a cease and desist order based on its finding of violations of sections 8(1) and (3) of the National Labor Relations Act (29 USCA sec. 158). Pursuant to section 10(f), 29 USCA sec. 160(f), the petitioners brought the order to this court for review. A similar petition for review was also filed by the International Brotherhood of Electrical Workers and numerous local unions (together referred to as the Brotherhood). The Brotherhood is affiliated with the American Federation of Labor, while United is connected with the Committee for Industrial

Organization. The Brotherhood had not intervened before the Board but regards itself as a "person aggrieved" by provisions of the order which affect it. In its answers to the petitions the Board prays for enforcement of its said order. United has appeared as an intervenor in support of the Board's order.

The first question to be considered is that of the Board's jurisdiction. Section 10(a) of the Act, 29 USCA sec. 160(a), empowers the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce." The terms "commerce" and "affecting commerce" are defined in section 2(6) and (7), 29 USCA sec. 152. It is not contended that the petitioners are themselves engaged in commerce as so defined. They are local public utility corporations and their production and distribution of electricity, gas and steam are carried on solely within the City of New York and adjacent Westchester County. The contention of federal jurisdiction over the labor relations of such employers is rested upon the argument that an interruption of their business by an industrial labor dispute would vitally affect commerce, because (1) in producing electric energy, gas and steam they use large quantities of raw materials originating outside the State of New York, and (2) some of their customers are engaged in interstate or foreign commerce or are instrumentalities of such commerce.

The facts are not in dispute; they were stipulated in great detail. A brief summary will suffice for present purposes. Consolidated Edison Company of New York is both an operating and a holding company; it owns between 90 and 100 per cent. of the voting stock of each of six affiliates, its co-petitioners. The parent corporation and each of its subsidiaries, with one exception, is a public utility company within the meaning of the Public Service Law of New York and is subject to regulation by the state commission. The one exception is Consolidated Telegraph and Electrical Subway Company, which maintains and leases to others of the petitioners space in sub-surface ducts. The petitioners' labor relations are also subject to state regulation under a recent statute (Ch. 443, Laws of 1937), unless jurisdiction of the state labor relations board must yield to that of the National Board. The petitioners are operated as a unitary system. A few figures will indicate the magni-

tude of the system's business. In 1936 it supplied 97.5 per cent. of all electric energy sold in New York City, and practically 100 per cent. of that sold in Westchester County; it supplied 55.3 per cent. of the total gas sold in New York City and is the only utility supplying gas in Westchester County. It is the only central-station steam utility in New York City. Its employees number more than 40,000 and its total payroll in 1936, including annuities and separation allowances, was nearly \$82,000,000. It used almost 5,000,000 tons of coal and more than 114,000,000 gallons of oil in the year 1936. All of the oil and all but an insignificant portion of the coal moved to the petitioners' plants from states other than New York. The out-of-state purchases are made from independent dealers and are delivered by independent carriers. Although the bulk of the petitioners' business, in respect to both the quantity of service and the number of consumers, is supplying electricity and gas for residential and local commercial uses, they also have numerous consumers who are engaged in interstate or foreign commerce. The most striking illustrations of this class of consumers are the railroads. Thus, electric energy supplied to the New York Central, the New York, New Haven and Hartford, and the Hudson and Manhattan is used for the lighting and operation of their passenger and freight terminals and for the movement of interstate trains; and steam supplied to the Pennsylvania Railroad Company is used to operate switches in its tunnel under the Hudson River.

The construction and validity of the National Labor Relations Act was extensively discussed in *Labor Board v. Jones & Laughlin*, 301 U.S. 1. As the Chief Justice there pointed out, the Act does not impose collective bargaining upon all industry regardless of effects upon interstate or foreign commerce. It purports to reach only what may be deemed to obstruct or burden such commerce. At page 37 the opinion states:

"Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control. *Schechter Corp. v. United States*, supra. Undoubtedly the scope of this power must

be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government. Id. The question is necessarily one of degree."

Consistently with these principles it can scarcely be doubted that the labor disputes of a local merchant will not normally fall within the Board's jurisdiction, even though some part of his stock in trade originates outside the state or some of his local customers are engaged in interstate commerce. In such a case the closing of the merchant's store by a strike of his employees would undoubtedly affect interstate commerce, but the effects would be too remote and indirect to bring his activities within the range of federal regulation. We need not say whether the same conclusion would follow if the merchant's importations from without the state ran into figures comparable to the petitioners importations of coal and oil. Nor need we decide whether their importations of raw materials are alone enough to bring them under the Board's jurisdiction. It is the use which some of their customers make of the electric energy and steam purchased from the petitioners, that furnishes the Board its main ground for claiming jurisdiction. The petitioners argue that they should not be chargeable for the independent acts of customers whom, by state law, they are compelled to serve. But the problem is not to be approached from the standpoint of vicarious liability. It is to be approached as a question of fact, namely, what will be the result upon commerce of a labor dispute between the petitioners and their employees. Should such a dispute result in interrupting the petitioners' service, the effects upon commerce would be catastrophic. We mention only some of them. Instantly the terminals and trains of three great interstate railroads would cease to operate; interstate communication by telegraph, telephone and radio would stop; lights maintained as aids to navigation would go out, and the business of interstate ferries and of foreign steamships, whose docks are lighted and operated by electric energy, would be greatly impeded. Such effects we cannot regard as indirect and remote.

It is true that the local consequences of a cessation of the petitioners' services would be equally, if not more, disastrous. It is argued that considerations of the health, safety and convenience of the millions of people who live and work in New York City outweigh the national interest in protecting interstate commerce from disruption; that local public utilities have always been regarded as exclusively within the jurisdiction of the states, and that to extend the federal jurisdiction to include them is to obliterate pro tant our dual system of government, contrary to the admonition of the Chief Justice in the *Jones & Laughlin* case. We are not unmindful of the persuasive force of these arguments. Nevertheless, we cannot doubt the power of Congress to legislate with respect to local utilities the disruption of whose service would have a direct effect upon interstate commerce; cf. *Appalachian Elec. Power Co. v. National Labor Rel. Board*, 93 F. (2d) 985 (C. C. A. 4); nor can we doubt that the Act under consideration was intended to exert federal power under the commerce clause to the full extent of constitutional limits. This is not to say that all utilities are within the Act. "The question is necessarily one of degree." In the case at bar the effect of disrupting service would be of such magnitude and so immediate, that we think the petitioners are within the Board's jurisdiction, even though only a small percentage of their total business is used in interstate or foreign commerce.

None of the Labor Board cases decided by the Supreme Court has presented a situation like that at bar. In three of them the Board's order ran against an employer whose business, though local in respect to manufacturing, was plainly interstate in respect to sales of a very large percentage of its manufactured product. *Labor Board v. Jones & Laughlin*, 301 U. S. 1; *Labor Board v. Fruehauf Co.*, 301 U. S. 49; *Labor Board v. Clothing Co.*, 301 U. S. 58. In one case the employer was engaged in a business of interstate communication (*Associated Press v. Labor Board*, 301 U. S. 103); in others the business was interstate transportation of passengers. *Washington Coach Co. v. Labor Board*, 301 U. S. 142; *Labor Board v. Pennsylvania Greyhound Lines*, 302 U. S. —; *Labor Board v. Pacific Greyhound Lines*, 302 U. S. —. We recognize that these cases are not decisive of the case at bar, but we think

that the principles they have announced point to the conclusion we have reached.

The petitioners contend that the Board denied them a full and fair hearing according to due process of law. This complaint is based upon four grounds. The first relates to the Board's direction that the proceeding be transferred to it pursuant to Rule 37. The result was that the Trial Examiner made no intermediate report, as contemplated by Rule 32, and the petitioners had no opportunity to file exceptions to his report as contemplated by Rule 34. Nor were they accorded oral argument before the Board, although it must be presumed that their brief submitted to the Trial Examiner came to the Board's attention. This procedure is not one likely to inspire confidence in the impartiality of the proceedings. It results in the findings of fact being made by persons who did not see the witnesses—a matter which may have far reaching consequences in view of the very limited power conferred upon the courts to review the Board's findings of fact. But, though we do not commend such procedure, we cannot say that it has deprived the petitioners of due process of law. It is familiar practice for a court to decide issues on testimony wholly taken by deposition; and section 10(c) of the Act places upon the Board the duty of stating its findings of fact "upon all the testimony taken." Nor do we think the Board is bound to hear oral argument if it prefers to take a brief. *Morgan v. United States*, 298 U. S. 468, presented a very different situation:

The second ground of complaint is that the Trial Examiner permitted amendments, thereby introducing issues which necessitated the presence of an absent party, namely, the Brotherhood. As will appear from subsequent discussion, we do not regard the Brotherhood as a necessary party.

The third ground relates to the Examiner's refusal to accept testimony relating to the petitioners' reasons for discharging an employee named Solosy. This will also be discussed later.

Finally, complaint is made that remote hearsay dominated the testimony. This court has already ruled that hearsay is admissible in hearings before the Board. *Remington-Rand v. Labor Board*, February 14, 1938 (C. C. A. 2). Whether some of the hearsay was too remote to be entitled

to credence, goes to the correctness of the Board's findings rather than to the constitutional validity of its proceedings. For the foregoing reasons the petitioners' contention that they have been denied due process of law is overruled.

We pass now to the merits of the controversy. The Board's findings of fact, conclusions of law and order are too voluminous to be incorporated in this opinion. The complaint, as amended, charged the petitioners with the following unfair labor practices: (1) the use of undercover operatives to spy upon union activities of employees, in violation of section 8(1); (2) the discriminatory discharge because of union activities of six employees, in violation of section 8(3); and (3) coercion of their employees in their right to form labor organizations of their own choosing in violation of section 8(1) and (2). The Board sustained the charges based on sections (1) and (3) but dismissed the charge based on section 8(2).

The most important of the charges is the one referring to coercing the employees into joining the Brotherhood. In the latter part of 1933 and the early part of 1934 the petitioners sponsored and assisted in the formation of certain Employee Representation Plans among their employees. They were company-dominated unions. Immediately after the validity of the National Labor Act was sustained by the Supreme Court, Carlisle, who was in charge of the petitioners' labor policy, conferred with Tracy, the international president of the Brotherhood, and on April 16, 1937, Tracy wrote him a letter demanding recognition of the Brotherhood as the representative of its members, and sending a proposed contract. On April 20, Carlisle called a meeting of the chairmen of all the general councils of the Plans and announced that the management could no longer continue financial support to the Plans, but had decided to recognize the Brotherhood. He said that the employees were expected to join the Brotherhood and he referred to it as the "sole bargaining body" for employees of Consolidated Edison Company. On the same date Carlisle replied to Tracy's letter, agreeing to recognize the Brotherhood and to negotiate contracts with it, although at this time the number of its members among the petitioners' employees was insignificant. Shortly thereafter there were set up seven Brotherhood locals, most of the officers of the Plans becoming officers of the locals. During the same period United was endeavoring to gain members among the petitioners' em-

ployees. An officer of United wrote Carlisle for a conference, but no answer was made to this letter. Without specifying further details it will suffice to say that there was ample evidence to support the Board's finding that the petitioners exerted pressure on their employees to join the Brotherhood, while they discouraged membership in United. Between May 28 and June 16, they entered into substantially similar contracts with the seven locals of the Brotherhood. The contracts were introduced by the petitioners in support of a contention that the issue of coercion of employees was thereby rendered moot. The contracts in terms recognized the Brotherhood as the representative of its members and were applicable only to such members. As of June 29, 1937, their membership was 30,000 out of 38,000 eligible employees. Paragraph 1(f) of the order under review directs the petitioners to cease and desist from "giving effect to their contracts with" the Brotherhood. Strenuous objection to this provision of the order is made both by the petitioners and by the Brotherhood.

They both urge that the Brotherhood was a necessary party to the proceeding if the Board's order is to invalidate these contracts. This contention has been authoritatively determined against them by the recent decision of the Supreme Court. *National Board v. Pennsylvania Greyhound Lines*, 302 U. S. — (announced Feb. 28, 1938). The order does not run against the Brotherhood. Its presence was not necessary to enable the Board to determine whether the Act had been violated or to make an appropriate order against the petitioners.

It is not so clear, however, that invalidating the contracts is an appropriate order against the petitioners. Unlike the Greyhound case, the Board has here dismissed the charge under section 8(2) which forbids an employer "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." Since the Brotherhood is not dominated, supported or interfered with by the petitioners, it is not immediately obvious that the employees' right to self-organization will be injured by allowing the contracts to be carried out. Under them, the Brotherhood acts only for its own members, and clause 1(g) of the order restrains the petitioners from recognizing it as the exclusive representative of their employees. Other subdivisions, namely 1(a), (b),

(c), (d), (e) and (h), restrain them from urging their employees to join any labor organization, or interfering with their free exercise of self-organization, or favoring the Brotherhood or any other labor organization. Under these provisions the employees will have complete freedom to join United in preference to the Brotherhood, or to join neither. But the Board concluded that "in order to establish conditions for the exercise of an unfettered choice of representatives" by the petitioners' employees, the petitioners should be ordered to cease and desist from giving effect to the contracts. We do not think that this conclusion is so unwarranted as to necessitate deleting clause (f) from the order. However, since the Board has found no reason for "disestablishing" the Brotherhood, as was done in the Greyhound case, it would seem to be entirely lawful for the petitioners and the Brotherhood to make new contracts on behalf of its own members, once the employees have been notified that the old contracts are not binding and that they are free to join or refrain from joining any labor organization; and the new contracts may be on the same terms as the old. We see nothing in the order to prevent that.

The Board has found that the petitioners discharged six employees because of their union activities contrary to section 8(3) of the Act. Three of the men were discharged November 29, 1935, and two on June 19, 1936. All five were officers or active leaders of Local 103 of the Brotherhood of Utility Employees, which later became affiliated with United. The petitioners presented testimony that these men were discharged because it was necessary to reduce the size of two departments in which they worked; that in making such reductions preference was given to married employees; and that these men were single and were treated no differently than others, both union and non-union, who were laid off about at the same time. The Board rejected this explanation chiefly, it would seem, because other single men with less seniority of service were retained. The question is not whether this court would have reached the same conclusion as the Board, but whether there is evidence to support the Board's findings. Section 10(d). We cannot say that the record is wholly barren of evidence to support the charge that they were discriminated against on account of union activities. Hence the order requiring that they be reinstated and made whole for losses sustained by reason of their dis-

charges must stand. This does not mean that the petitioners must employ these five men in addition to their present employees, if the work to be done does not require additions to their force, for the petitioners are at liberty to discharge an equal number of other employees for proper reasons.

The sixth discharge complained of is that of Solosy, who was laid off January 17, 1936. The reason given him was the shutting down of the "A" plant of the Astoria Light, Heat & Power Company. It was in fact shut down. Other employees in his division, of less seniority, were retained. In his case, also, the Board found that in reality his discharge was because of his union activity. Solosy's case differs from the others in that the petitioners were not allowed to introduce certain evidence as to the circumstances surrounding his discharge. This situation arose as follows: The Board unexpectedly completed its proof on June 24, 1937. Counsel for the petitioners was unready to go on and obtained a continuance in order that Messrs. Carlisle and Dean, who were absent from the city, might testify on July 6th. The Examiner and the Board (by letter) declined to let any other witnesses testify on that date. Counsel offered two of Solosy's supervisors to testify to the reasons for his discharge and to the fact that the men who were retained in preference to him were better educated and better trained. These witnesses were at hand, their testimony would have been short and would have entailed no appreciable delay in closing the hearings. It was vital testimony on the issue of the petitioners' motive in discharging him. Denial of leave to introduce it appears to us unreasonable and arbitrary. However, the petitioners have not applied to this court for the taking of additional evidence, as they might under section 10(e).

An order of this court may be entered for enforcement of the Board's order.

IN UNITED STATES CIRCUIT COURT OF APPEALS, SECOND
CIRCUIT

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., et al,
Petitioners,

VS.

NATIONAL LABOR RELATIONS BOARD, Respondent

JUDGMENT—Filed March 21, 1938

Petitions by the Consolidated Edison Company of New York, et al., for review of an order of the above named respondent, and a prayer by said respondent for enforcement of said order having come on to be heard,

Upon consideration thereof it is

Ordered that the prayer of said respondent for the enforcement of the Board's order be and the same is hereby granted.

Wm. Parkin, Clerk.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES—OCTOBER TERM,
1938

No. 19

ORDER ALLOWING CERTIORARI—Filed May 16, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES—OCTOBER TERM,
1938

No. 25

ORDER ALLOWING CERTIORARI—Filed May 16, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in

